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*Attorneys for City of Pocatello*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF POCATELLO, CITY OF BLISS,  
CITY OF BURLEY, CITY OF CAREY, CITY  
OF DECLO, CITY OF DIETRICH, CITY OF  
GOODING, CITY OF HAZELTON, CITY OF  
HEYBURN, CITY OF JEROME, CITY OF  
PAUL, CITY OF RICHFIELD, CITY OF  
RUPERT, CITY OF SHOSHONE, CITY OF  
WENDELL, BINGHAM GROUND WATER  
DISTRICT, BONNEVILLE-JEFFERSON  
GROUND WATER DISTRICT, AND  
MCCAIN FOODS USA, INC.,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES, AND GARY SPACKMAN, in  
his capacity as Director of the Idaho Department  
of Water Resources,

Respondents.

CV01-23-08258

Case No. \_\_\_\_\_

IDWR Docket No. CM-DC-2010-001

**DECLARATION OF  
SARAH A. KLAHN IN SUPPORT  
OF COMPLAINT FOR  
DECLARATORY RELIEF,  
PETITION FOR WRIT OF  
PROHIBITION, AND PETITION  
FOR WRIT OF MANDAMUS**

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

I, Sarah A. Klahn, declare and state as follows:

1. I am over the age of 18 and competent to testify. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify thereto. I am an attorney admitted to the bar of Idaho and am a shareholder at Somach Simmons & Dunn, P.C.

2. I am an attorney of record for Petitioner City of Pocatello (“Pocatello”) in the above-captioned action, as well as an attorney for Pocatello in proceedings before the Director (“Director”) of the Idaho Department Water Resources (“IDWR” or “Department”) in Docket No. CM-DC-2010-001.

3. On April 21, 2023 the Department issued the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”) and the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”). Numerous pleadings and documents have been filed with the Department or disclosed by the Department since that time; to the extent possible these filings are attached to this declaration. However, some of the documents were “zipped” and/or technical documents related to modeling and are not easily

downloadable. For the Court's convenience, this link <https://idwr.idaho.gov/legal-actions/delivery-call-actions/SWC/> contains all material filed or disclosed since April 21, 2023.

4. Exhibits A-1 through A-44 attached hereto were filed by parties or issued by the Department in Docket No. CM-DC-2010-001:

- a. Attached as Exhibit A-1 is a true and correct copy of the Fifth Methodology Order, entered on April 21, 2023.
- b. Attached as Exhibit A-2 is a true and correct copy of the As-Applied Order, entered on April 21, 2023.
- c. Attached as Exhibit A-3 is a true and correct copy of the *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery*, filed on April 21, 2023.
- d. Attached as Exhibit A-4 is a true and correct copy of the *Coalition of Cities' Request for Hearing*, filed April 28, 2023.
- e. Attached as Exhibit A-5 is a true and correct copy of the *Motion for Appointment of Independent Hearing Officer*, dated April 28, 2023.
- f. Attached as Exhibit A-6 is a true and correct copy of *Motion for Continuance*, filed April 28, 2023 by Coalition of Cities, Pocatello, and the City of Idaho Falls.
- g. Attached as Exhibit A-7 is a true and correct copy of *McCain Foods USA, Inc.'s Request for Hearing and Objection*, filed April 28, 2023.
- h. Attached as Exhibit A-8 is a true and correct copy of *Coalition of Cities' Amended Request for Hearing*, dated April 28, 2023.

- i. Attached as Exhibit A-9 is a true and correct copy of *Pocatello's Request for Hearing*, filed April 28, 2023.
- j. Attached as Exhibit A-10 is a true and correct copy of *Scheduling Order and Order Authorizing Remote Appearance at Hearing*, entered May 2, 2023.
- k. Attached as Exhibit A-11 is a true and correct copy of *Notice of Substitution of Counsel for Bingham Ground Water District*, filed May 2, 2023.
- l. Attached as Exhibit A-12 is a true and correct copy of *IGWA's Petition for Reconsideration and Request for Hearing*, filed May 2, 2023.
- m. Attached as Exhibit A-13 is a true and correct copy of *Amalgamated Sugar Company's Request for Hearing, Objection, Identification of Issues and Notice of Mitigation*, filed May 4, 2023.
- n. Attached as Exhibit A-14 is a true and correct copy of *Declaration of Candice M. McHugh in Support of Notice of Mitigation*, filed May 4, 2023.
- o. Attached as Exhibit A-15 is a true and correct copy of *McCain Foods USA, Inc.'s Notice of Mitigation*, filed May 4, 2023.
- p. Attached as Exhibit A-16 is a true and correct copy of *City of Idaho Falls Challenge and Request for Hearing*, filed May 4, 2023.

- q. Attached as Exhibit A-17 is a true and correct copy of *Bonneville-Jefferson Ground Water District's Request for Hearing*, filed May 4, 2023.
- r. Attached as Exhibit A-18 is a true and correct copy of *Joint Notice of Deposition Duces Tecum of Jennifer Sukow, P.E., P.G.*, filed May 4, 2023.
- s. Attached as Exhibit A-19 is a true and correct copy of *Joint Notice of Deposition Duces Tecum of Matthew Anders, P.G.*, filed May 4, 2023.
- t. Attached as Exhibit A-20 is a true and correct copy of *Pocatello's Statement of Issues*, filed May 4, 2023.
- u. Attached as Exhibit A-21 is a true and correct copy of *Coalition of Cities' Statement of Issues*, filed May 5, 2023.
- v. Attached as Exhibit A-22 is a true and correct copy of *IGWA's Statement of Issues*, filed May 5, 2023.
- w. Attached as Exhibit A-23 is a true and correct copy of *McCain Foods USA, Inc.'s Statement of Issues*, filed May 5, 2023.
- x. Attached as Exhibit A-24 is a true and correct copy of *Notice of Ground Water District Mitigation*, filed May 5, 2023 by IGWA.
- y. Attached as Exhibit A-25 is a true and correct copy of *Bonneville-Jefferson Ground Water District's Statement of Issues*, filed May 5, 2023.

- z. Attached as Exhibit A-26 is a true and correct copy of *Bingham Ground Water District's Request for Hearing*, filed May 5, 2023.
- aa. Attached as Exhibit A-27 is a true and correct copy of *City of Idaho Falls Statement of Issues*, filed May 5, 2023.
- bb. Attached as Exhibit A-28 is a true and correct copy of *Surface Water Coalition's Request for Hearing and Statement of Issues*, filed May 5, 2023.
- cc. Attached as Exhibit A-29 is a true and correct copy of *Falls Irrigation District's Notice of Communication to Water District 01 Watermaster*, filed May 5, 2023.
- dd. Attached as Exhibit A-30 is a true and correct copy of *A&B Irrigation District's Notice of Communication to Water District 01 Watermaster*, filed May 5, 2023.
- ee. Attached as Exhibit A-31 is a true and correct copy of *Motion for Reconsideration of Denial of Continuance*, filed May 5, 2023, by Cities and IGWA.
- ff. Attached as Exhibit A-32 is a true and correct copy of *Declaration of Candice M. McHugh* [in support of Motion for Reconsideration of Denial of Continuance], filed May 5, 2023.
- gg. Attached as Exhibit A-33 is a true and correct copy of *Order Denying the Cities' Motion for Appointment of Independent hearing Officer and*

*Motion for Continuance and Limiting Scope of Depositions*, entered May 5, 2023.

- hh. Attached as Exhibit A-34 is a true and correct copy of *Declaration of Jaxon Higgs*, filed May 5, 2023.
- ii. Attached as Exhibit A-35 is a true and correct copy of *Declaration of Sophia Sigstedt*, filed May 5, 2023.
- jj. Attached as Exhibit A-36 is a true and correct copy of *Motion for Reconsideration* [of As-Applied Order], filed May 5, 2023 by Groundwater Users.
- kk. Attached as Exhibit A-37 is a true and correct copy of *Declaration of Bryce Contor in Support of Motion for Reconsideration of Denial of Continuance*, filed May 5, 2023.
- ll. Attached as Exhibit A-38 is a true and correct copy of *Declaration of Skyler C. Johns in Support of Motion for Reconsideration of Denial of Continuance*, filed May 5, 2023.
- mm. Attached as Exhibit A-39 is a true and correct copy of *Declaration of Thane Kindred in Support of Motion for Reconsideration of Denial of Continuance*, dated May 5, 2023.
- nn. Attached as Exhibit A-40 is a true and correct copy of *Declaration of Gregory K. Sullivan, P.E. (in support of Motion for Reconsideration of Denial of Continuance)*, filed May 8, 2023.

- oo. Attached as Exhibit A-41 is a true and correct copy of *Declaration of Gregory K. Sullivan, P.C. in support of groundwater users' Motion for Reconsideration as to Twin Falls Canal Company's irrigated acres*), filed May 8, 2023.
- pp. Attached as Exhibit A-42 is a true and correct copy of *Surface Water Coalition's Opposition to Groundwater Users' Motion for Reconsideration of Order Denying Motion for Continuance*, filed May 8, 2023.
- qq. Attached as Exhibit A-43 is a true and correct copy of *I.R.C.P. 30(b)(6) Notice of Taking Deposition Duces Tecum of IDWR*, filed May 8, 2023.
- rr. Attached as Exhibit A-44 is a true and correct copy of *Groundwater Users' First Set of Request for Production to IDWR; Or, Alternatively, Request for Public Records*, filed May 8, 2023.
- ss. Attached as Exhibit A-45 is a true and correct copy of the *April 28, 2023 Transcript from Pre-Hearing Conference Conducted at IDWR*.
- tt. Attached as Exhibit A-46 is a true and correct copy of the *May 12, 2023 Deposition Transcript of Matt Anders, P.G.*
- uu. Attached as Exhibit A-47 is a true and correct copy of the *May 10, 2023 Deposition Transcript of Jennifer Sukow*.
- vv. *Notice of Materials Department Witnesses May Rely Upon at Hearing and Intent to Take Official Notice*, filed May 5, 2023 (filed with Zip file



of materials not in readily-printable format, available on the link provided in paragraph 3 above).

ww. *Documents Provided During the May 12, 2023 Deposition of Matthew Anders*, filed May 12, 2023 (filed with Zip file of materials not in readily-printable format, available on the link provided in paragraph 3 above).

xx. *Documents Requested During the May 10, 2023 Deposition of Jennifer Sukow*, filed May 15, 2023 (filed with Zip file of materials not in readily-printable format, available on the link provided in paragraph 3 above).

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED this 19th day of May, 2023.

SOMACH SIMMONS & DUNN, P.C.



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Sarah A. Klahn, ISB #7928

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 2023, I caused to be filed a true and correct copy of the foregoing document via iCourt E-File and Serve, and upon such filing, the following parties were served via electronic mail:

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Sarah A. Klahn, ISB # 7928

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF THE DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY AND 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-DC-2010-001

**FIFTH AMENDED FINAL ORDER REGARDING METHODOLOGY FOR DETERMINING MATERIAL INJURY TO REASONABLE IN-SEASON DEMAND AND REASONABLE CARRYOVER**

**BACKGROUND**

On April 19, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued his *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fourth Methodology Order”). The Fourth Methodology Order: (1) explained how the Director would determine material injury to storage and natural flow water rights of members of the Surface Water Coalition (“SWC”)<sup>1</sup>; (2) established methods for quantifying material injury to SWC storage and natural flow water rights as predictive and actual demand shortfalls; (3) established methods for quantifying mitigation obligations by holders of junior priority ground water rights for shortfalls in predictive and actual SWC water demands; and (4) established a method for determining a priority date for curtailment if mitigation obligations are not satisfied.

The processes established in the Fourth Methodology Order for determining material injury are not carved in stone. Updates to the methodology order based on additional data and analyses were always anticipated:

Recognizing his ongoing duty to administer the State’s water resources, the Director should use available data, and consider new analytical methods or modeling concepts, to evaluate the methodology. As more data is gathered and analyzed, the Director will review and refine the process of predicting and evaluating material injury. The methodology will be adjusted if the data supports a change.

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<sup>1</sup> The SWC is comprised of A&B District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. Each entity holds separate senior surface natural flow water rights and has separate storage contracts for storage water space in the reservoirs.

*Fourth Methodology Order*, Conclusion of Law 17; *see also In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 645, 315 P.3d 828, 833 (2013) (“[t]he concept of a baseline is that it is adjustable . . .”). The prediction and determination of rights and obligations of the holders of senior priority and junior priority water rights respectively must: (1) apply the best available science and underlying water data; (2) consider changing climatic and cropping patterns; and (3) adhere to the most recent decisions of the courts related to water administration.

Many of the data sets the Department relied upon in the Fourth Methodology Order have been expanded and now include additional years. Furthermore, the Department now has multiple years of experience with the methodology to better understand the impact of applying steady-state modeling versus transient modeling to determine a curtailment priority date that would supply adequate water to the senior water right holders. The first version of the ESPA groundwater flow model was not calibrated at a time-scale that supported in-season transient modeling. In contrast, the current version was calibrated using monthly stress periods and half-month time steps, a refinement that facilitates in-season transient modeling for calculating the response to curtailment of groundwater use. The purpose of this *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”) is to update the Director’s methodology for determining material injury to storage and natural flow water rights either held by or committed to members of the SWC consistent with the Director’s ongoing obligation to use the best available science and information.

## FINDINGS OF FACT

### **I. Overview of the Methodology for Determining Material Injury to Water Rights by Determining Reasonable In-Season Demand and Reasonable Carryover**

1. The methodology for determining material injury to water rights by determining reasonable in-season demand (“RISD”) and reasonable carryover should be based on updated data, the best available science, analytical methods, and the Director’s professional judgment as manager of the state’s water resources. In the future, climate may vary and conditions may change; therefore, the methodology may need to be adjusted to consider a different baseline year or years (“BLY”) or changes to other components.

2. In-season demand shortfall (“IDS”) will be computed by subtracting RISD from the forecast supply (“FS”). In-season demand shortfall is computed using the following equation:

$$IDS = FS - RISD$$

3. If the FS is greater than the RISD, there is no demand shortfall. If the FS is less than the RISD, the negative difference is the demand shortfall. Initially, RISD is equal to the historic demands associated with a BLY as selected by the Director, but will be corrected during the season to account for variations in climate and water supply between the BLY and actual conditions.

4. Reasonable carryover shortfall will be computed by subtracting reasonable carryover from actual carryover, where reasonable carryover is defined as the difference between a baseline year demand (“BD”) and projected typical dry year supply. Reasonable carryover shortfall will be computed using the following equation:

$$\text{Reasonable Carryover Shortfall} = \text{Actual Carryover} - \text{Reasonable Carryover}$$

5. If actual carryover exceeds the reasonable carryover, there is no reasonable carryover shortfall. In contrast, if reasonable carryover exceeds the actual carryover, the negative difference is the reasonable carryover shortfall.

6. The concepts underlying the selection of the BLY, determination of in-season demand shortfall, and reasonable carryover shortfall will be discussed in detail below.

## **II. In-Season Demand Shortfall**

### **A. Considerations for the Selection of a Baseline Year**

7. A BLY is a year or average of years when irrigation demand represents conditions that can predict need in the current year of irrigation at the start of the irrigation season. The purpose of predicting need is to estimate material injury.

8. A BLY is selected by analyzing three factors: (1) climate; (2) available water supply; and (3) irrigation practices. R. Vol. 37 at 7098.<sup>2</sup> To capture current irrigation practices, identification of a BLY is limited to years subsequent to 1999. *Id.* at 7096.

9. The historic diversion volumes from the BLY and the predicted supply forecast at the start of the irrigation season are inputs to predict the initial ISD, where a demand shortfall is the difference between the BD and the FS. When the difference is a negative number, the ISD is zero. ISD increases with increases in BD, decreases in FS, or both. Assuming constant irrigation practices, crop distributions, and total irrigated acres, demand for irrigation water typically increases in years of higher temperature, higher reference evapotranspiration (“ET”), and lower precipitation. If water demand data is averaged for several years and these averages are the basis to predict demand shortfall at the start of the season, in a high-water demand year, these averages may often under-predict the demand shortfall. In a high-water demand year, under-prediction of IDS might be acceptable if the junior priority ground water right holders and the senior priority surface water right holders shared equally in the risk of water shortages. Equality in sharing the risk will not adequately protect the senior priority surface water right holder from injury. Actual demand shortfalls to a senior surface water right holder resulting from predictions at the start of the irrigation season based on average data unreasonably shifts the risk of shortage to the senior surface water right holder. Therefore, a BLY should represent a

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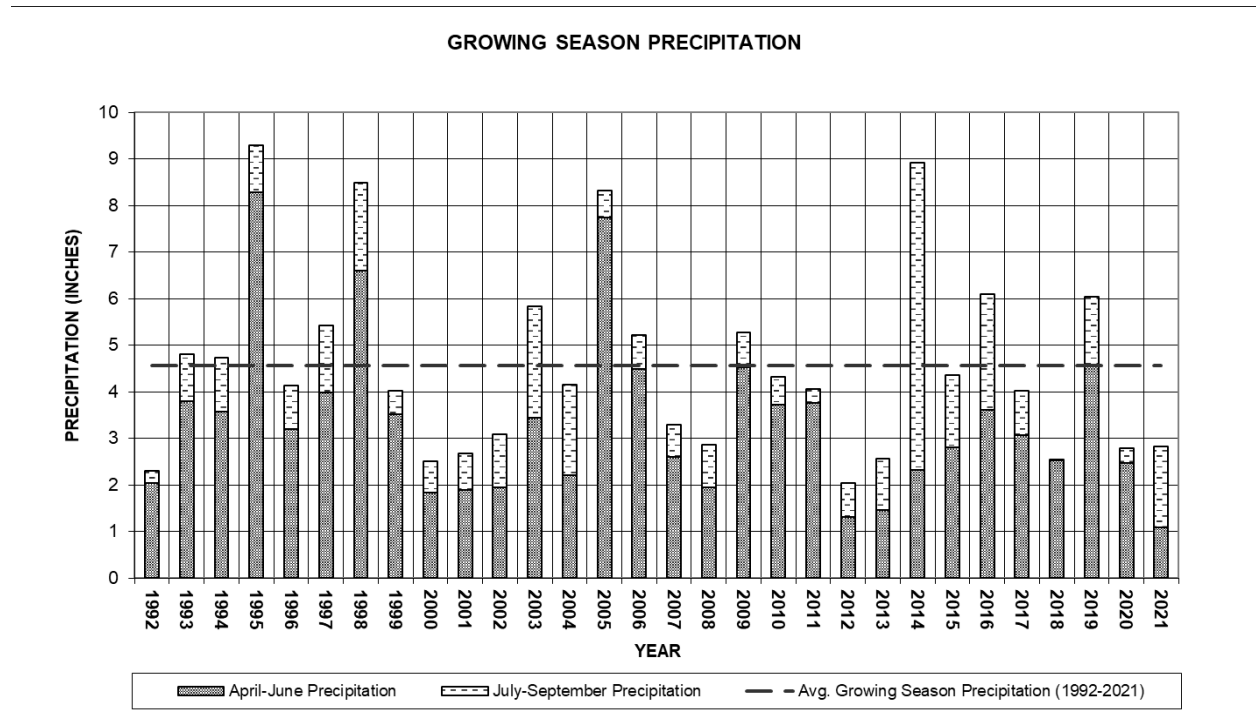
<sup>2</sup> All citations in this Order are to material that was admitted during the original hearing and is part of the final agency record on appeal in Gooding County Case No. CV-2008-551, which was lodged with the Fifth Judicial District Court on February 6, 2009.

year(s) of above average diversions and should not represent a year(s) of average or below average diversions. An above average diversion year(s) selected as the BLY should also represent a year(s) of above average temperatures and reference ET, and below average precipitation to ensure that increased diversions were a function of crop water need and not other factors. In addition, actual supply should be analyzed to assure that the BLY is not a year of limited supply.

**i. Climate**

10. For the methods outlined herein, climate is represented by precipitation, reference ET, and growing degree days.

11. Precipitation. Water, in all phases, introduced to Idaho from the atmosphere is termed precipitation. During the growing season, precipitation reduces the irrigation water needed for growing crops. Ex. 3024 at 19. The figure below shows the precipitation recorded during the growing season at the National Weather Service’s Twin Falls weather station.



Growing Season Precipitation at National Weather Service’s Twin Falls Weather Station 1992–2021.<sup>3</sup>

<sup>3</sup> The Fourth Methodology Order included data for the period 1990 through 2014. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021. The chart is created from NOAA National Weather Service total precipitation data obtained from the NCDL’s Climatological Data Annual Summary Idaho report series for the Twin Falls 6 E and Twin Falls Sun Valley Regional Airport weather stations.

12. Evapotranspiration. ET is a variable representing both the amount of water that transpires from vegetation and the amount of water that evaporates from the underlying soil. ET is an important factor for properly estimating RISD. In its water budget calculations, the SWC proposed the use of ET values from the USBR as part of their Pacific Northwest Cooperative Agricultural Network, i.e. AgriMet. Ex. 8000, Vol. II, Chap. 9; Ex. 8000, Vol. IV, Appdx. AU. The ground water users proposed the use of ET values from Richard G. Allen and Clarence W. Robison 2007, *Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho*, i.e. ETIdaho. Ex. 3007A at 21; Ex. 3024 at 1-58.

13. Reference ET is a standardized index that approximates the climatic demand for water vapor (i.e. ET). Both ETIdaho and AgriMet calculate and publish reference ET data. The Department will identify potential BLYs by consulting both ETIdaho reference ET and AgriMet reference ET.

14. Neither ETIdaho reference ET data nor AgriMet reference ET data span the entire period of analysis (1992-2021). ETIdaho reference ET data are currently available from 1990 through 2016.<sup>4</sup> AgriMet reference ET data are available from 2000 to 2021.<sup>5</sup> Ideal BLY candidates are years in which reference ET exceeds average reference ET values. The individual year is compared using both AgriMet and ETIdaho reference ET data for those years in which both data are available and only AgriMet data in those years where there is no ETIdaho data.

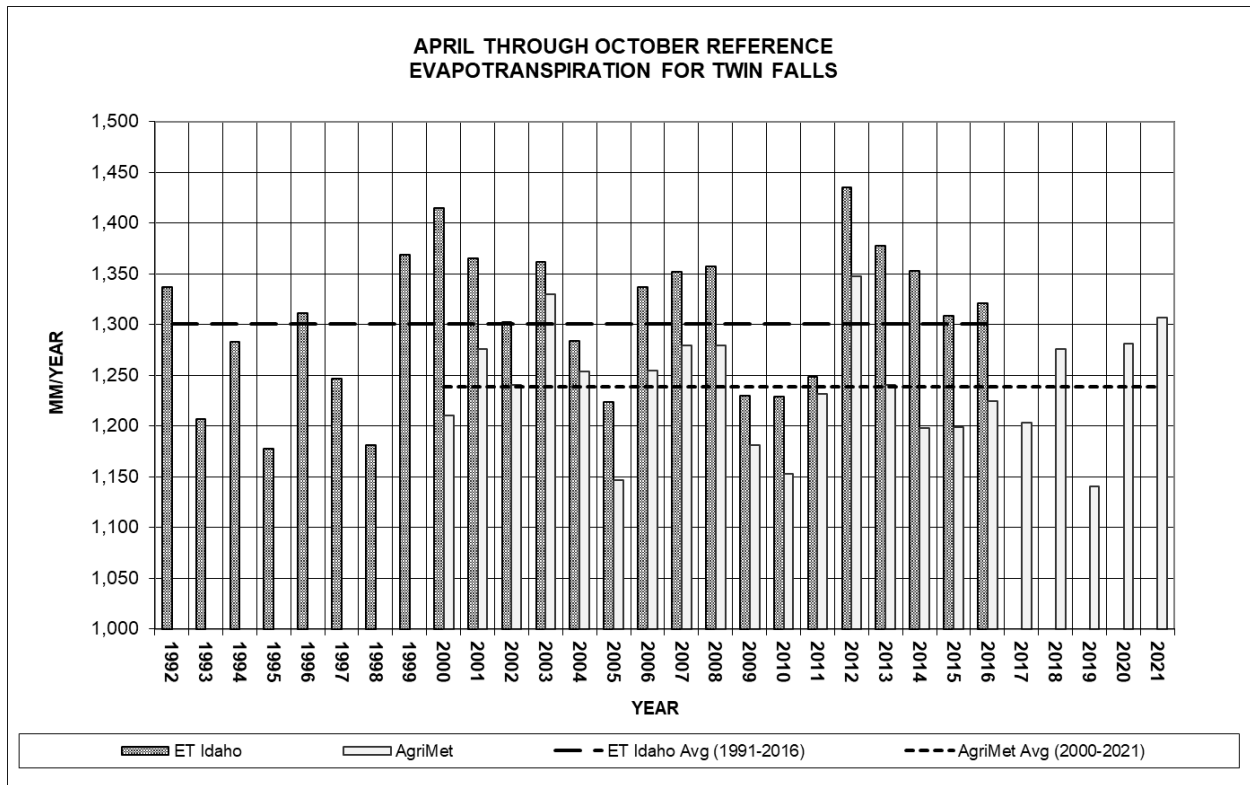
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<sup>4</sup> The Fourth Methodology Order included ETIdaho reference ET data for the period 1991 to 2011. ETIdaho reference ET data is now available through 2016. This Fifth Methodology Order updates this chart with data for the period 1992 to 2016.

<sup>5</sup> The Fourth Methodology Order included AgriMet reference ET data for the period 2000 to 2014. . AgriMet reference ET data is now available through 2021. This Fifth Methodology Order updates this chart with data for the period 2000 to 2021.



15. Years of above average values of reference ET are appropriate BLY candidates.<sup>6</sup> Total April through October reference ET for the period of record from the Twin Falls (Kimberly) AgriMet site is shown below.

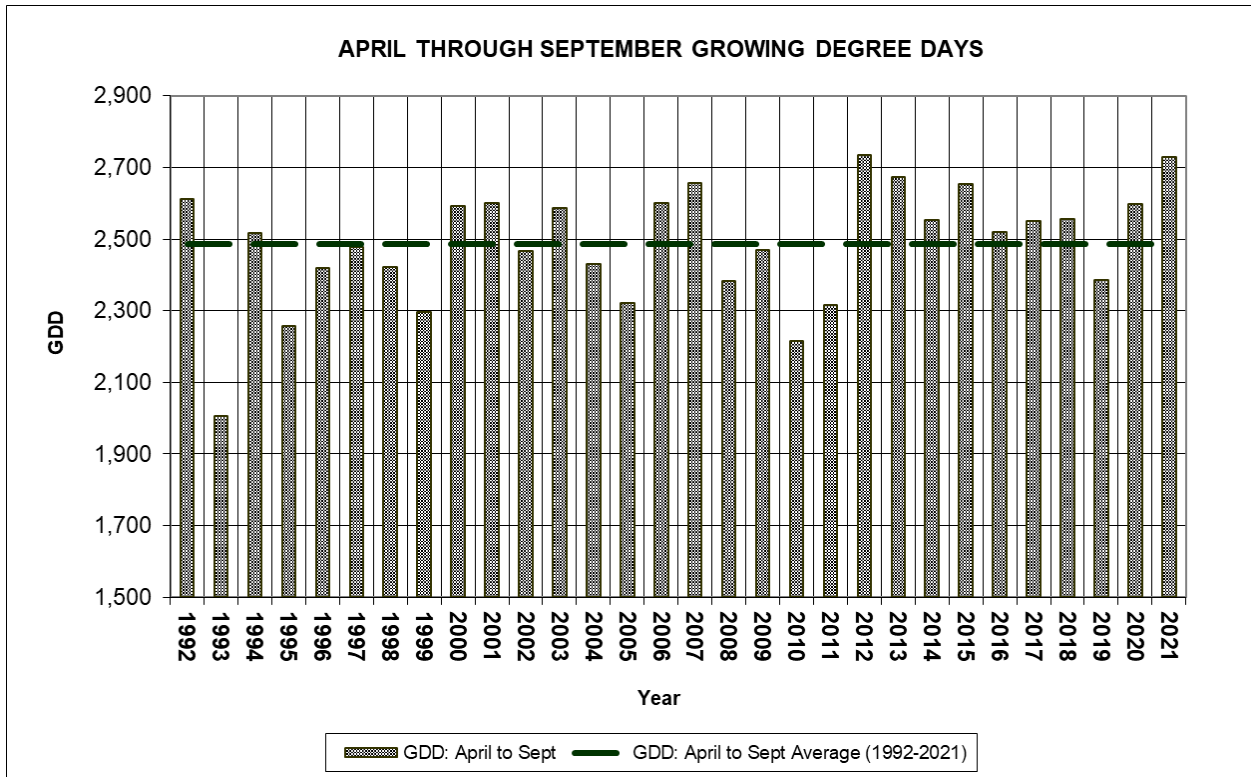


Reference ET for Twin Falls (Kimberly) with both AgriMet and ETIdaho data 1992-2021.<sup>7</sup>

<sup>6</sup> Values for reference ET between ETIdaho and AgriMet do not match because they are derived differently. The relevant information for identifying a potential BLY is the relationship between the year under consideration and the average for the data sets.

<sup>7</sup> The Fourth Methodology Order included data only through 2014. This Fifth Methodology Order updates this chart with combined data for the period 1992 to 2021, establishing a 30-year record which is the professional standard of practice for calculating climatic and hydrologic normals.

16. Growing Degree Days. Growing degree days define the length and type of growing season. Growing degree days are an arithmetic accumulation of daily mean temperature above a certain base temperature. Ex. 3024 at 10; 117-21. These growth units are a simple method of relating plant growth and development to air temperatures. Different plant species have different base temperatures below which they do not grow. At temperatures above this base, the amount of plant growth is approximately proportional to the amount of heat or temperature accumulated. A higher annual growing degree day value correlates to a higher potential rate of plant growth. The table below shows growing degree days accumulated for April through September for the Twin Falls (Kimberly) AgriMet site.

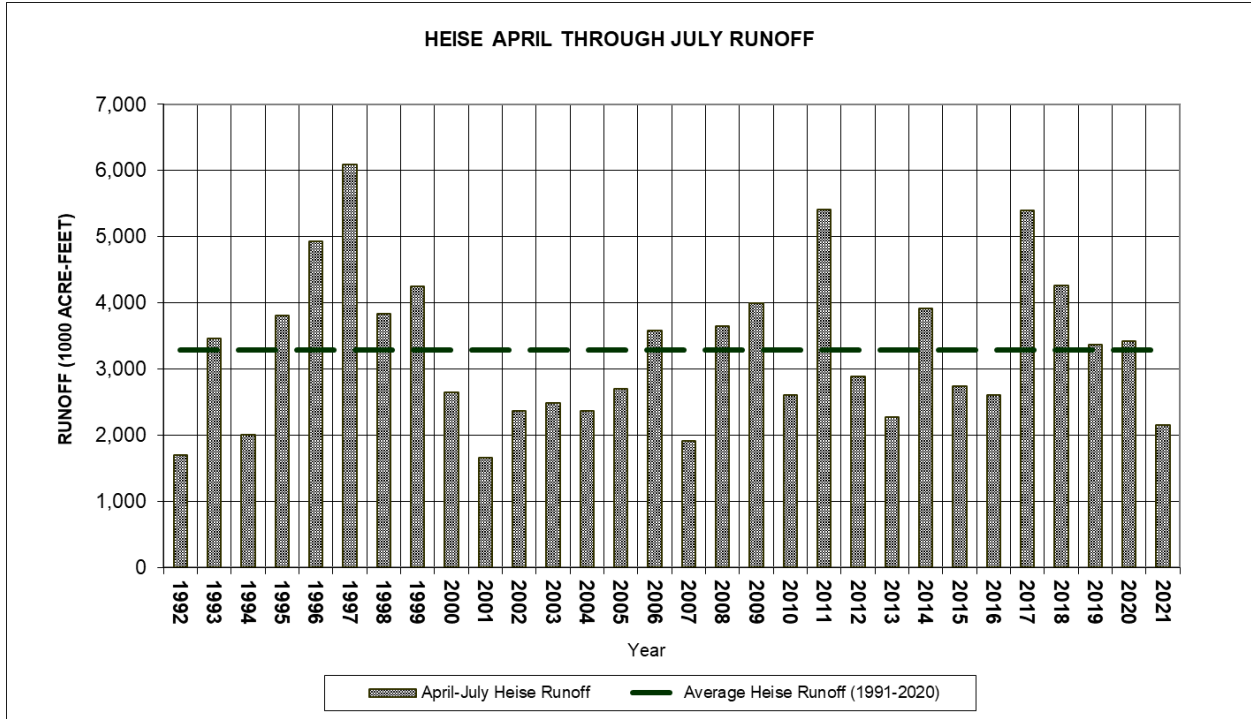


Growing Degree Days (“GDD”) for Twin Falls (Kimberly) AgriMet Site 1992-2021.<sup>8</sup>

<sup>8</sup> The Fourth Methodology Order included data only through 2014. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021.

**ii. Available Water Supply**

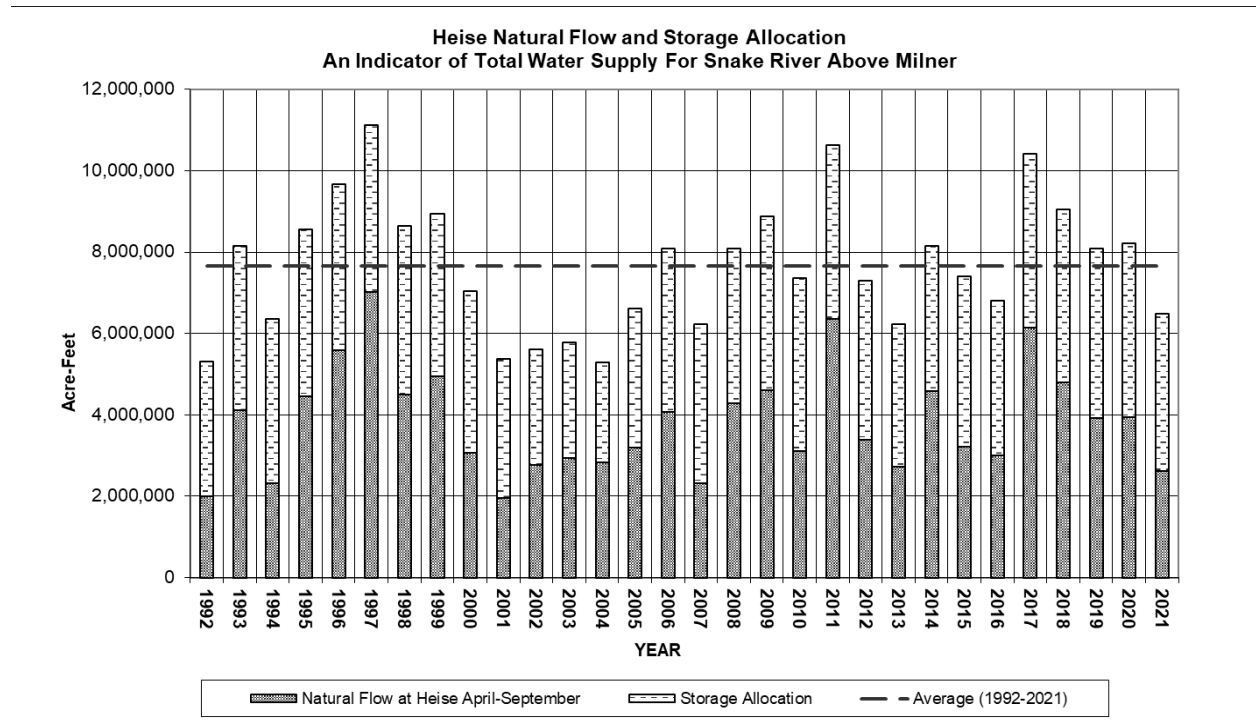
17. The April through July Heise runoff volume represents the volume of water available for diversion into storage reservoirs and is an indicator of natural flow supplies. The graph below shows actual unregulated flow volumes at Heise for 1992 through 2021. The 1992 to 2021 average (3,284,000 acre-feet) is displayed by the dashed line.



April through July Unregulated Flow Volume at Heise, 1992-2021.<sup>9</sup>

<sup>9</sup> The Fourth Methodology Order included data only through 2014. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021.

18. The sum of the Heise natural flow and the reservoir storage allocations is an indicator of the total supply of the Snake River. The sum of the Heise natural flow and reservoir storage allocations for each year from 1992-2021 is represented in the graph below.



The sum of the Heise natural flow and the storage allocation for the Snake River above Milner 1992-2021.<sup>10</sup>

### iii. Irrigation Practices

19. A baseline year (“BLY”) must be recent enough to represent current irrigation practices. R. Vol. 37 at 7099-7100. Current conditions should be represented by: (a) the net area of the irrigated crops, (b) farm application methods (flood/furrow or sprinkler irrigation), and (c) the conveyance system from the river to the farm. The type of sprinkler systems should be similar between the BLY and the current year.

20. Sprinkler systems are currently the predominant application system. *Id.* at 7101-02. To ensure that current irrigation practices are captured, selection of a BLY for the SWC should be limited to years subsequent to 1999. *Id.* at 7096; 7099-7100.

<sup>10</sup> The Fourth Methodology Order included data for the period 1990 to 2014. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021.

21. Estimates of irrigated acres from the hearing show a trend of decreasing irrigated acreage. R. Vol. 28, 5205-15; R. Vol. 37 at 7100. According to the Hearing Officer, beneficial use cannot occur on acres that have been hardened or are otherwise not irrigated. R. Vol. 37 at 7100.

22. The following table summarizes: a) SWC entities; b) shapefile source of reported irrigated acres; c) year shapefile created; d) decreed irrigated acres; (e) number of reported acres in shapefile; and f) irrigated acres used in this methodology order for the 2023 irrigation season. The number of irrigated acres used in this methodology order is the number of reported acres unless that number is larger than the decreed irrigated acres, and if so, then the decreed acres were used. This table will be updated annually based on the reported number of irrigated acres by each SWC entity in Step 1 of the Methodology Order.

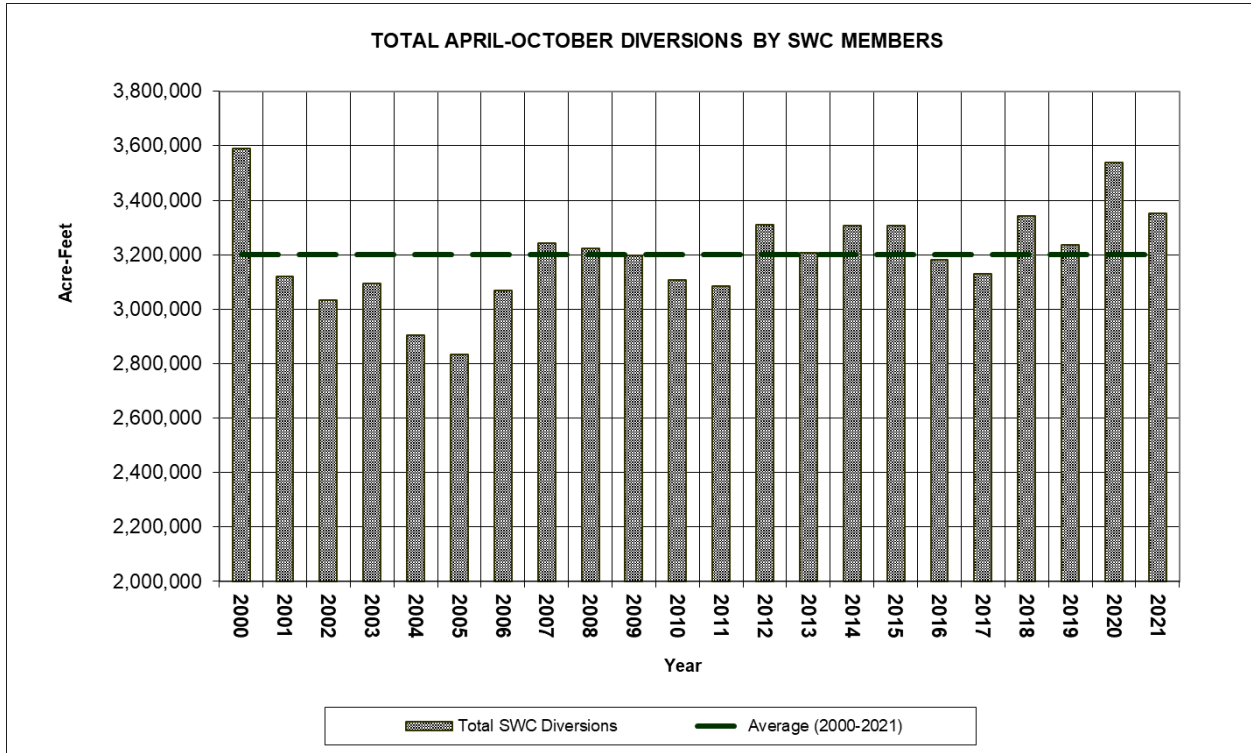
Entity	Shapefile Source	Shapefile Year	Partial Decree Acres	Shapefile Acres	Acres Used in Methodology
A&B	PPU <sup>1</sup>	2010	15,924	21,972	15,924
AFRD2	PPU	2010	62,361	69,077	62,361
BID	SWC	2013	47,643	46,035	46,035
Milner	PPU	2010	13,335	13,264	13,264
Minidoka	SWC	2023	75,093	77,176	75,093
NSCC	PPU	2010	154,067	224,463	154,067
TFCC	SWC	2013	196,162	194,732	194,732
<sup>1</sup> IDWR permissible place of use.					

Acres used in the methodology.

23. There are lands within the service areas of SWC entities that are irrigated with supplemental groundwater. Exhibit 3007. Supplemental groundwater is a factor the Director can consider in the context of a delivery call. *Memorandum Decision and Order on Petitions for Judicial Review* (“Methodology Remand Order”) in Gooding County Consolidated Case No. CV-2010-382, at 18-19. At this time, the information submitted or available to the Department is insufficient to determine the extent of supplemental irrigation on lands within the service areas of SWC entities.

**iv. Diversions**

24. The following figure summarizes the annual measured diversions by the combined SWC members from 2000-2021. Diversions for a baseline year should exceed the average diversions.



Total April-October Diversions by SWC Members.<sup>11</sup>

**B. Selection of the Initial Baseline Year**

25. When selecting the BLY the Director must evaluate recent data to determine whether the BLY section criteria are satisfied.

26. In the Fourth Methodology Order, the Department considered the years 2000-2014 when deciding the BLY. Ultimately, the Department chose an average of the years 2006, 2008, and 2012 for the BLY (“BLY 06/08/12”). For this Fifth Methodology Order, the years 2000-2021 were considered for the BLY selection. With the addition of new data from 2014 to 2021, the total diversions by the SWC for the previous BLY 06/08/12 are 100% of the average SWC diversions for the years 2000-2021. As a result of adding the new data, BLY 06/08/12 no longer satisfies the presumption criteria that total diversions in the BLY should exceed the average annual diversions. Mem. Decision & Order on Pets. for Jud. Rev., at 34, *IGWA v. Idaho Dep’t of Water Res.*, No. CV-2010-382 (Gooding Cnty. Dist. Ct. Idaho Sept. 26, 2014).

<sup>11</sup> The Fourth Methodology Order did not include this chart. It was added to demonstrate that the baseline year is a year of above average total diversions.

27. Years 2018 and 2020 satisfy all the BLY selection criteria discussed above. Each of these years had (1) total diversions above the average diversions for the years 2000-2021, (2) total growing degree days above the average for the years 1992-2021, and (3) reference ET values above the average for the years 1992-2021. The years 2018 and 2020 also had total precipitation values below the average precipitation for the years 1992-2021 and were not water supply limited years. The Department has reviewed the SWC’s diversion data for the 2020 irrigation season. The Department finds that 2020 ranks as the second-highest year of total diversions for the SWC and is more than one standard deviation above the average for the years 2000-2021. In comparison, 2018 ranks as the fourth-highest year of total diversions for the SWC and is less than one standard deviation above the average for the years 2000-2021. Choosing a BLY with above average diversions but within one standard deviation, ensures that a conservative year is selected that protects the senior while excluding extreme years from consideration. The Director concludes that total diversions for 2018 adequately protect senior water rights when predicting the demand shortfall at the start of the irrigation season and selects 2018 as the BLY.

Entity	2000-2021 Avg. Total Diversions (Acre-Feet)	06/08/12 Avg. Total Diversions (Acre-Feet)	06/08/12 % of Avg.	2018 Total Diversions (Acre-Feet)	2018 % of Avg.
A&B	59,474	59,993	101%	64,192	108%
AFRD2	427,978	427,672	100%	453,890	106%
BID	247,049	251,531	102%	262,211	106%
Milner	53,343	47,135	88%	58,417	110%
Minidoka	354,181	369,492	104%	354,851	100%
NSCC	996,267	978,888	98%	1,026,661	103%
TFCC	1,062,098	1,060,011	100%	1,121,717	106%
Total	3,200,389	3,194,722	100%	3,341,939	104%

Average SWC Diversions (acre-feet) for 2000-2021, 2006/2008/2012 BLY, and 2018 BLY.

**C. Calculation of Reasonable In-Season Demand**

28. Reasonable in-season demand (RISD) is the projected annual diversion volume for each SWC entity during the year of evaluation that is attributable to the beneficial use of growing crops within the service area of the entity. Given that climate and system operations for the year being evaluated will likely be different from the BLY, the BLY must be adjusted for those differences. As stated by the Hearing Officer, “The concept of a baseline is that it is adjustable as weather conditions or practices change, and that those adjustments will occur in an orderly, understood protocol.” R. Vol. 37 at 7098.

**i. Project Efficiency**

29. Project efficiency (“E<sub>p</sub>”) is the ratio of total volumetric crop water needs within a SWC entity’s boundary and the total volume of water diverted by that entity to satisfy its crop needs. It is the same concept as system efficiency, which was presented at hearing. Ex. 3007 at FIFTH AMENDED FINAL ORDER REGARDING METHODOLOGY FOR DETERMINING MATERIAL INJURY TO REASONABLE IN-SEASON DEMAND AND REASONABLE CARRYOVER—Page 12

28-29. Implicit in this relationship are the components of seepage loss (conveyance loss), on-farm application losses (deep percolation, field runoff), and system operational losses (return flows) for which data is not obtainable by the Department. By utilizing project efficiency and its input parameters of crop water need and total diversions, the influence of the unknown components for which data is not obtainable can be captured and described without quantifying each of the components. Project efficiency is derived by dividing crop water need by total diversions as depicted in the algorithm below:

$$E_p = \frac{CWN}{Q_D}$$

Where:

$E_p$  = project efficiency,

CWN = crop water need, and

$Q_D$  = irrigation entity diversion of water specifically put to beneficial use for the growing of crops within the irrigation entity.

30. Monthly SWC entity diversions (“ $Q_D$ ”) will be obtained from Water District 01’s diversion records. Ex. 8000, Vol. II, at 8-4, 8-5. Raw monthly diversion values will then be adjusted to remove any water diversions that can be identified to not directly support the beneficial use of crop development within the irrigation entity. Examples of adjustments include the removal of diversions associated with in-season recharge and diversion of irrigation water on the behalf of another irrigation entity. Adjustments are unique to each SWC member and each irrigation season and will be evaluated each year. Any natural flow or storage water deliveries to entities other than the SWC for purposes unrelated to the original right will not be included as a part of the SWC water supply or carryover volume. Water that is purchased or leased by a SWC member may become part of the shortfall obligation to the extent that member has been found to have been materially injured. *See e.g.* R. Vol. 38 at 7201, n. 11 (Eighth Supplemental Order). Conversely, water supplied to private leases or to the rental pool by a SWC member will be included as a part of the SWC supply for that member because non-inclusion would unjustifiably increase the shortfall obligation.

31. Monthly project efficiencies will be computed for the entire irrigation season. Project efficiency varies from month-to-month during the season and will typically be lower during the beginning and ending of the season. Monthly project efficiencies will be divided into actual monthly crop water need (“CWN”) values to determine RISD during the year of evaluation.

32. In the Fourth Methodology Order, project efficiencies for each SWC member were initially averaged over an eight-year period (2007-2014) and project efficiency greater or less than two standard deviations were excluded from the calculation. By including only those values within two standard deviations, extreme values from the data set are removed. Under the Fourth Methodology Order, an updated 8-year rolling average of project efficiencies was calculated each year the methodology was implemented. The Director now finds that averaging over a rolling period of 15 years results in project efficiency values that are more consistent from year-to-year, reducing the impact of short-term trends. The Director finds that it is still



appropriate to remove project efficiencies greater or less than two standard deviations from the average.

The following is a table of efficiency values averaged over the most recent fifteen-year period of record.

Month	A&B	AFRD2	BID	Milner	Minidoka	NSCC	TFCC	Monthly Avg.
4	0.98	0.33	0.45	0.87	0.43	0.24	0.31	0.51
5	0.47	0.22	0.32	0.39	0.35	0.24	0.30	0.33
6	0.66	0.40	0.49	0.60	0.56	0.41	0.51	0.52
7	0.74	0.44	0.52	0.67	0.63	0.48	0.58	0.58
8	0.58	0.41	0.42	0.55	0.52	0.43	0.46	0.48
9	0.45	0.27	0.32	0.45	0.38	0.32	0.27	0.35
10	0.18	0.16	0.09	0.14	0.11	0.06	0.04	0.11
Season Avg.	0.58	0.32	0.37	0.52	0.43	0.31	0.35	

SWC Member Average Monthly Project Efficiencies from 2007-2021.<sup>12</sup>

## ii. Crop Water Need

33. CWN is the volume of irrigation water required for crop growth within a SWC entity boundary, such that crop growth is not limited by water availability. CWN only applies to crops irrigated with surface water. CWN is the difference between the fully realizable consumptive use associated with crop growth, or ET, and effective precipitation ( $W_e$ ) and is synonymous with the terms irrigation water requirement and precipitation deficit. Ex. 3024. For the purposes of the methodology, CWN is calculated as set forth below:

$$CWN = \sum_{i=1}^n (ET_i - W_e) A_i$$

Where,

CWN = crop water need

$ET_i$  = consumptive use of specific crop type,

$W_e$  = effective precipitation,

$A_i$  = total irrigated area of specific crop type,

$i$  = index variable representing the different specific crop types grown within the irrigation entity, and

$n$  = upper bound of summation equal to the total number of different specific crop types grown within the irrigation entity.

<sup>12</sup> In the Fourth Methodology Order, this table summarized average  $E_p$  data for the period 2007 to 2014. This Fifth Methodology Order updates this table with average  $E_p$  data for the period 2007 to 2021.

### **iii. Evapotranspiration**

34. ET can be estimated with theoretically based equations that calculate ET for an individual crop, necessitating crop distribution maps for each year. Ex. 3007A at 21, Figure 3, Tables 6-12; Ex. 3024 at 1-58; Ex. 8000, Vol. II at Chapter 9; Ex. 8000, Vol. IV, Appdx. AU.

35. At hearing, values of ET were estimated by the SWC from AgriMet, Ex. 8000, Vol. IV, Appdx. AU-1, and by the ground water users from ETIdaho, Ex. 3007A at 21; Ex. 3024 at 1-58. At this time, the Director finds that the use of AgriMet is more appropriate for determining ET than ETIdaho because AgriMet is available to all parties in real-time without the need for advanced programming. Accordingly, the methodology will rely on AgriMet derived ET values in the calculations of project efficiency, CWN, and RISD. In the future, with the development of additional enhancements, ETIdaho may become a more appropriate analytical tool for determining ET.<sup>13</sup>

36. CWN is derived by multiplying crop specific ET values, adjusted for estimated effective precipitation, by the total irrigated area of individual crop types, and summing for all crop types. The areas for individual crop types will be derived from published crop distributions from the United States Department of Agriculture's National Agricultural Statistics Service ("NASS"). Ex. 1005 at 1. NASS annually creates a crop-specific land cover digital dataset from satellite imagery and field checks. The dataset is called the Cropland Data Layer ("CDL"). Each year, the Department will calculate acreage by crop type for each SWC entity using NASS CDL data. In the future, the NASS data may not be the most accurate source of data. The Department prefers to rely on data from the current season if and when it becomes usable.

37. AgriMet ET and precipitation data are gathered at the Rupert and Twin Falls (Kimberly) stations. Both stations are in the vicinity of the SWC entities. A&B Irrigation District ("A&B"), Burley Irrigation District ("BID"), and Minidoka Irrigation District ("Minidoka") are nearest to the Rupert AgriMet station. ET data gathered at the Rupert station reasonably represents the climate conditions for A&B, BID, and Minidoka. American Falls Reservoir District No. 2 ("AFRD2"), Milner Irrigation District ("Milner"), North Side Canal Company ("NSCC"), and Twin Falls Canal Company ("TFCC") are nearest to the Twin Falls (Kimberly) AgriMet station. ET data gathered at the Twin Falls (Kimberly) station reasonably represents the climate conditions for AFRD2, Milner, NSCC, and TFCC. Ex. 8000, Vol. IV at AU-2, AU-8.

### **iv. Effective Precipitation**

38. Effective precipitation (" $W_e$ ") is the amount of total precipitation held in the soil horizon available for crop root uptake. Effective precipitation will be estimated from total precipitation ( $W$ ) employing the methodology presented in the USDA Technical Bulletin 1275. Ex. 8000, Vol. IV, Appdx. AU3, AU8. Total precipitation ( $W$ ) data is published by the USBR as

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<sup>13</sup> IDWR held a series of meetings in the winter of 2022-23 with the parties' technical consultants to discuss potential updates to the methodology order. During the meetings, IDWR discussed alternative methods of determining ET values, such as METRIC. However, the Director finds that the methods considered are not yet ready for incorporation into the administration of the SWC Delivery Call and will continue to rely on AgriMet ET data.

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part of its Pacific Northwest Cooperative Agricultural Network, i.e. AgriMet.<sup>14</sup> Ex. 8000, Vol. IV, Appdx. AU3.  $W_e$  values derived from AgriMet based precipitation values are independent of crop type.

39. AgriMet precipitation ( $W$ ) values are easy to understand and regularly used by the farming, water supply, and water management communities. Accordingly, the methodology will rely on AgriMet derived  $W$  values in the calculations of CWN and RISD.

40. As with ET data, AgriMet precipitation data are available from the Rupert and Twin Falls (Kimberly) stations. AgriMet data from the Rupert station reasonably represents climate conditions for A&B, BID, and Minidoka. AgriMet data from Twin Falls (Kimberly) reasonably represents climate conditions for AFRD2, Milner, NSCC, and TFCC. Ex. 8000, Vol. IV at AU-2, AU-8.

**v. Summary of Reasonable In-Season Demand Calculation**

41. At the start of the irrigation season, RISD is equal to the BD, or total season adjusted diversions for the BLY. When calculated in-season, RISD is calculated below.

$$RISD_{\text{milestone}_x} = \sum_{j=1}^m \left( \frac{CWN_j}{E_{p,j}} \right) + \sum_{j=m+1}^7 BD_j$$

Where:

- RISD<sub>milestone<sub>x</sub></sub> = reasonable in season demand at specified evaluation milestones during the irrigation season,
- CWN = crop water need for month  $j$ ,
- $E_p$  = baseline project efficiency for month  $j$ ,
- BD = baseline demand for month  $j$ ,
- $j$  = index variable, and
- $m$  = upper bound of summation, equal to the month calculation occurs, where April = 1, May =2, ... October = 7.

42. April RISD Adjustment: In April, the calculated RISD, which is the quotient of CWN and  $E_p$ , can underestimate actual canal operation diversions. Under-estimation occurs when the actual CWN value for April is much smaller than the diversion of water into the canal system necessary to effectively operate the irrigation delivery system. Often, CWN in April is small due to precipitation, cool temperatures, and/or the immaturity of the crop. The diversion rate at the head gate necessary to push water into all laterals and field head gates throughout the delivery system often dwarfs the water necessary to strictly satisfy CWN. In addition, it is difficult for canal systems to be dynamically operated to match the frequent precipitation events in April, which also contributes to a diversion of water at the canal head gate that exceeds the diversion of water necessary to strictly satisfy CWN. To account for the conditions affecting the

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<sup>14</sup> IDWR held a series of meetings in the winter of 2022-23 with the parties' technical consultants to discuss potential updates to the methodology order. During the meeting, IDWR discussed alternative methods to determine  $W$  values, such as PRISM. However, the Director finds that the methods considered are not yet ready for incorporation into the administration of the SWC Delivery Call and will continue to rely on AgriMet precipitation data.

usability of the calculated RISD value for April, the values may be adjusted for each individual irrigation delivery entity in the SWC as described below.

43. When the calculation of CWN/Ep results in a value for the month of April less than the average April diversion volume over a record of representative years in the recent past, the April RISD is set equal to the average April diversion volume. When the calculation of CWN/Ep results in a value greater than the average April diversion volume, the April RISD is equal to the calculated CWN/Ep volume.

44. October RISD Adjustment: In October, the calculated RISD, which is equal to the CWN divided by Ep, can both under-estimate and over-estimate actual canal operation diversions. The RISD may be underestimated when the actual CWN value for October is much smaller than the diversion of water into the canal system necessary to effectively operate the irrigation delivery system. The diversion rate at the head gate necessary to push water into all laterals and field head gates throughout the delivery system often dwarfs the water necessary to strictly satisfy CWN. In addition, it is difficult for canal systems to be dynamically operated to match the frequent precipitation events in October, which also contributes to a diversion of water at the canal head gate that exceeds the diversion of water necessary to strictly satisfy CWN. Furthermore, RISD may be underestimated in October when a farmer diverts water at the field head gate for farming practices other than strictly satisfying CWN. Examples of water diversion practices at the field head gate that sometimes occur in October include diverting water for soil salt leaching, diverting water to build up the soil moisture profile for the following irrigation season, and/or diverting water to wet-up bare soil to prevent wind-driven topsoil erosion.

45. Unlike the month of April, RISD can be over-estimated in October. RISD may be over-estimated in years when actual CWN in October is much greater than typical CWN over a record of representative years in the recent past due to low precipitation and/or warm temperatures. To account for the conditions affecting the usability of the RISD value calculated for October, the values may be adjusted for each individual irrigation delivery entity in the SWC as described below.

46. When the calculation of CWN/Ep results in a value for the month of October greater than the maximum October diversion volume from a record of recent representative years, or less than the minimum October diversion volume from the same record of recent representative years, the October RISD is set equal to the average October diversion volume over the same period of recent representative years. When the calculation of CWN/Ep results in a value between the maximum and minimum October diversion volumes from a record of recent representative years, the October RISD is equal to the calculated CWN/Ep volume.

#### **D. Adjustment of Forecast Supply**

47. As stated by the Hearing Officer, “There must be adjustments as conditions develop if any baseline supply concept is to be used.” R. Vol. 37 at 7093. A prediction of the upcoming season’s supply and demand is calculated at the beginning of the irrigation season and

adjusted at specified milestones during the irrigation season to address changes in water supply and demand conditions in response to actual climatic and water supply conditions.

**i. April Forecast Supply**

48. The FS is comprised of natural flow and stored water.

49. Typically, within the first week of April, the USBR and the USACE issue their Joint Forecast that predicts an unregulated inflow volume at the Heise Gage from April 1 to July 31 for the forthcoming year. The joint forecast (“Joint Forecast”) issued by the United States Bureau of Reclamation (“USBR”) and the United States Army Corp of Engineers (“USACE”) for the period April 1 through July 31 “is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.” R. Vol. 8 at 1379, ¶ 98. Given current forecasting techniques, the earliest the Director can predict material injury “with reasonable certainty” is soon after the Joint Forecast is issued. R. Vol. 2 at 226. With data from 1990 through the irrigation year previous to the current year, a regression equation will be developed for each SWC member.<sup>15</sup> The regression equations for A&B and Milner will be developed by comparing the actual Heise natural flow to the natural flow diverted. *See e.g.* R. Vol. 8 at 1416-22. For AFRD2, BID, Minidoka, NSCC, and TFCC, multi-linear regression equations will be developed by comparing the actual Snake River near Heise natural flow and the flows at Box Canyon to the natural flow diverted. The regression equations will be used to predict the natural flow diverted for the upcoming irrigation season. *Id.* at 1380. The actual natural flow volume predicted in the Director’s April FS for each SWC entity will be one standard error below the regression line, which underestimates the available supply. *Id.*; Tr. p. 65, lns. 6-25; p. 66, lns. 1-2. The purpose of the shift to one standard error below the regression line is to ensure senior water right holders do not bear the risk of under-prediction of supply. The forecasting techniques will be revised based on updated data and the forecasting techniques may be revised when improvements to the forecasting tools occur.

50. The storage allocation for each member of the SWC will be estimated by the Department following issuance of the Joint Forecast. The Department will forecast reservoir fill and storage allocation consistent with the methods established in the *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007*. R. Vol. 23 at 4294-97 as explained below. The Department will evaluate the current reservoir conditions and the current water supply outlook to determine a historical analogous year or years to predict reservoir fill. The Department may identify and use a combination of different analogous years to predict individual reservoir fill. Input variables for determining the individual storage water allocation for each SWC member are: (a) the analogous year’s or years’ total reservoir fill volume; (b) an estimated evaporation volume; and (c) the previous year’s carryover volume. The FS (the combination of the forecast of natural flow supply and the storage allocation) for each SWC member will be determined by the Director shortly after the date of the Joint Forecast.

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<sup>15</sup> IDWR held a series of meetings in the winter of 2022-23 with the parties' technical consultants to discuss potential updates to the methodology order. During the meetings, IDWR discussed updating the regression models used to forecast the SWC’s water supplies in April. However, the Director finds that the current models still adequately forecast water supplies in April and will continue to rely on the existing regression models.

51. Any time prior to the Director's final determination of the April FS, if the Director can determine with certainty that any member of the SWC has diverted more natural flow than predicted, or has accrued more storage than predicted, the Director will revise his initial, projected shortfall determination.

**ii. July Forecast Supply**

52. Approximately halfway through the irrigation season, the FS will be adjusted. When adjusting the natural flow component of the FS, the Department's water rights accounting program will compute the year-to-date natural flow diverted by each member of the SWC. The natural flow diversion for the remainder of the irrigation season will be estimated based on the regression analyses.

53. The natural flow supplies for each SWC member are comprised of natural flow in the Snake River passing the near Blackfoot gage and gains that occur in the Snake River between the Blackfoot to Milner reach. Many different predictor variables were considered when developing the models used to predict the natural flow supplies for the remainder of the season, including those variables used in the April FS.<sup>16</sup> A step-wise statistical analysis was employed to help select the variables for each model. The following variables were selected to forecast water supplies halfway through the irrigation season: natural flow in the Snake River near Heise as reported by the U.S. Bureau of Reclamation; snow water equivalent (SWE) data at the Two Ocean Plateau SNOTEL site; Spring Creek discharge; and groundwater levels near American Falls Reservoir. The model predictors were optimized for each SWC member and are summarized in the sections below.

54. Linear regression equations for AFRD2, A&B, and Milner, will be developed by comparing the July 1 snow water equivalent (inches) at the Two Ocean Plateau SNOTEL site to the natural flow diversions. The regression equations for AFRD2, A&B, and Milner will be applied only in those years when the snow water equivalent at the Two Ocean Plateau SNOTEL site is greater than zero (0). Years when the snow water equivalent equals zero, the total natural flow prediction for the period July 1 to October 31 will be zero (0) AF.

55. Multiple linear regression equations for BID, Minidoka, and NSCC will be developed to predict natural flow diversions employing the following predictor variables: (1) Snake River near Heise natural flow (April – June), (2) March depth to water at well 05S 31E 27ABA1 and (3) the snow water equivalent at the Two Ocean Plateau SNOTEL site on June 15.

56. The multiple linear regression model for TFCC will be based on the following predictor variables: (1) Snake River near Heise natural flow (April – June), (2) Spring Creek total discharge (January – May) and (3) the snow water equivalent at the Two Ocean Plateau SNOTEL site on June 15.

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<sup>16</sup> IDWR held a series of meetings in the winter of 2022-23 with the parties' technical consultants to discuss potential updates to the methodology order. IDWR discussed updating the regression models used to forecast the SWC's water supplies in July. However, the Director finds that the current models still adequately forecast water supplies in July and will continue to rely on the existing regression models.

57. When adjusting the storage component of the FS, the Department must consider whether stored water has been allocated. In normal to dry years, the reservoirs will typically have filled to their peak capacity for the season and the storage water will have been allocated. If the BOR and Water District 01 have allocated stored water to spaceholders, the Department will use the actual preliminary storage allocations to the SWC. If the BOR and Water District 01 have not yet allocated stored water to spaceholders, the Department will predict the storage allocations based on the storage allocations from an analogous year or years.

### iii. Time of Need

58. The FS will again be adjusted shortly before the Time of Need. The Time of Need is established by predicting the day in which the remaining storage allocation will be equal to reasonable carryover. The Time of Need will not be earlier than the Day of Allocation.

59. When adjusting the natural flow component of the FS, the Department's water rights accounting program will compute the natural flow diverted by each member of the SWC as of the new forecast date. The natural flow diversion for the remainder of the irrigation season will be estimated based on a historical year with similar reach gains in the Blackfoot to Milner reach. The following is an example of estimating reach gains from an analysis of historical years. Reach gains for the years 2000 – 2003 and a portion of year 2004 are graphed below. Considering 2004 as an example of a current year and comparing 2004 to the hydrographs for 2000 – 2003, year 2003 has similar reach gains and is appropriately conservative. Therefore, the natural flow diverted in 2003 would be used to predict the natural flow diversions for the remainder of the 2004 season.



Example Reach Gain Analysis for 2004.

60. When adjusting the storage component of the FS, the Department will use the actual preliminary storage allocations to the SWC.

61. The adjusted FS is the sum of the year-to-date natural flow diversions, the predicted natural flow diversions for the remainder of the season, and the storage allocation.

#### **E. Calculation of In-Season Demand Shortfall**

62. The equation below determines the amount of predicted demand shortfall during the irrigation season.

$$IDS = FS - RISD$$

Where:

IDS = demand shortfall for specified evaluation points throughout the season,

FS = forecasted supply adjusted for specified evaluation point during the season, and

RISD = reasonable in-season demand from above.

63. The amount calculated represents the volume that junior ground water users with approved mitigation plans for delivery of water will be required to have available for delivery to members of the SWC found to be materially injured by the Director to avoid curtailment. The amounts will be calculated in April, at the middle of the season, and at the Time of Need.

### **III. Methodology for Determining Material Injury to Reasonable Carryover**

64. Conjunctive Management (“CM”) Rule 42.01.g states the following guidance for determining reasonable carryover: “In determining a reasonable amount of carry-over storage water, the Director shall consider average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system.” Carryover shortfall will be determined following the completion of the irrigation season.

#### **A. Projected Water Supply**

65. CM Rule 42.01.g states that the Director “shall consider . . . the projected water supply for the system.” Because it is not possible to adequately forecast the irrigation supply or demand for the following irrigation season at the end of the current irrigation season, the Director must estimate the carryover water needed in future dry years when demand exceeds supply, creating a need for carryover storage. The Director projected the water supply using typical dry years and subtracted it from a projected future demand to determine a projected carryover need.



66. The Heise natural flow is a predictive indicator of total water supply. For the years 2002 and 2004, the Heise natural flows were well below the long term average (1992-2021), but were not the lowest years on record.<sup>17</sup> The average of the 2002 and 2004 supply will be the projected supply, representing a typical dry year. The 2002 and 2004 supply is computed as follows:

- 2002 supply = natural flow diverted + new storage fill
- 2004 supply = natural flow diverted + new storage fill
- Projected supply = average of 2002 supply and 2004 supply

Carryover from previous years is not included in the 2002 and 2004 new storage fill because it was not new water supplied during the 2002 or 2004 irrigation year.

	2002 Natural Flow Diverted	2002 New Storage Fill	2002 Total Supply	2004 Natural Flow Diverted	2004 New Storage Fill	2004 Total Supply	Projected Supply (Average 02/04)
-----Acre-Feet-----							
A&B	853	45,603	46,456	1	36,535	36,536	41,496
AFRD2	25,749	381,451	407,200	4,562	309,698	314,260	360,730
BID	89,886	174,454	264,340	102,706	152,387	255,093	259,716
Milner	5,058	43,430	48,488	1,027	35,175	36,202	42,345
Minidoka	143,937	256,602	400,539	141,460	229,574	371,034	385,787
NSCC	363,960	667,799	1,031,759	315,942	479,068	795,010	913,385
TFCC	851,970	186,233	1,038,203	881,345	150,218	1,031,563	1,034,883

SWC water supplies 2002, 2004, and 2002/2004 average (acre-feet).

67. Similar to projecting supply, the Director must also project demand. Because it is not possible to adequately forecast the irrigation demand for the following irrigation season at the end of the current irrigation season, the Director must project demand. R. Vol. 37 at 7109. The 2018 BLY will be the projected demand.

<sup>17</sup> The Fourth Methodology Order included data for the period 1991 to 2014. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021.

68. The maximum projected carryover need is defined as the difference between a BLY demand and projected typical dry year supply. The following equation computes the maximum projected carryover need:

$$\text{Maximum Projected Carryover Need} = \text{Projected Demand (2018 BLY)} - \text{Projected Supply (Average 02/04)}$$

	Projected Demand (2018 BLY)	Projected Supply (average 02/04)	Maximum Projected Carryover Need
-----Acre-Feet-----			
A&B	64,192	41,496	22,696
AFRD2	453,890	360,730	93,160
BID	262,211	259,716	2,495
Milner	58,417	42,345	16,072
Minidoka	354,851	385,787	0
NSSC	1,026,661	913,385	113,277
TFCC	1,121,717	1,034,883	86,834

SWC Projected Demand, Projected Supply and Maximum Projected Carryover Need (acre-feet).<sup>18</sup>

**B. Average Annual Rate of Fill**

69. CM Rule 42.01.g states that the Director “shall consider the average annual rate of fill of storage reservoirs . . . .” The average annual rate of fill of the storage reservoirs is the average of annual percentages of fill of each entity’s reservoir space. The average annual reservoir storage fill is a benchmark that can be compared to projected carryover need. For purposes of the table below, any water contributed to the rental pool from the previous year was added to the next year’s fill volume so that it does not artificially lower the percent fill. R. Vol. 37 at 7108. Water that is supplied to the rental pool lowers carryover and could impact the following year’s fill. The percent fill does not include water deducted for reservoir evaporation.

<sup>18</sup> This Fifth Methodology Order updates this chart with the new baseline year and calculates new maximum projected carryover need values.

The annual percent fill of storage volume by SWC entity is shown below:

Year	A&B	AFRD2	BID	Milner	Minidoka	NSCC	TFCC
1992	96%	100%	98%	93%	75%	76%	86%
1993	100%	100%	100%	100%	100%	93%	92%
1994	100%	100%	100%	100%	99%	99%	99%
1995	100%	100%	100%	100%	100%	100%	100%
1996	100%	100%	100%	100%	100%	100%	100%
1997	100%	100%	100%	100%	100%	100%	100%
1998	100%	100%	100%	100%	100%	100%	100%
1999	100%	100%	100%	96%	98%	98%	99%
2000	100%	99%	99%	98%	100%	97%	97%
2001	100%	100%	100%	100%	100%	91%	87%
2002	41%	100%	100%	79%	92%	84%	88%
2003	43%	100%	99%	66%	92%	94%	99%
2004	34%	82%	97%	48%	94%	78%	63%
2005	58%	100%	100%	76%	98%	100%	100%
2006	98%	100%	99%	98%	100%	99%	99%
2007	89%	100%	97%	92%	94%	95%	97%
2008	100%	100%	100%	100%	100%	99%	100%
2009	100%	100%	100%	100%	100%	100%	100%
2010	100%	100%	100%	100%	100%	100%	100%
2011	100%	100%	100%	100%	100%	100%	100%
2012	88%	100%	97%	91%	94%	94%	96%
2013	80%	100%	97%	90%	90%	97%	100%
2014	93%	100%	100%	100%	95%	100%	100%
2015	100%	100%	100%	100%	100%	100%	100%
2016	100%	100%	100%	100%	95%	100%	100%
2017	100%	100%	100%	100%	100%	100%	100%
2018	100%	100%	100%	100%	100%	100%	100%
2019	96%	100%	99%	97%	98%	98%	99%
2020	100%	100%	100%	100%	100%	100%	100%
2021	100%	100%	100%	100%	98%	100%	100%
Average	91%	99%	99%	94%	97%	96%	97%
Std Dev	19%	3%	1%	12%	5%	6%	8%

Annual Percent Fill of Storage Volume by Entity (1992-2021).<sup>19</sup>

<sup>19</sup> The Fourth Methodology Order included data from 1995 through 2014. This Fifth Methodology Order updates this chart with data from 1992 through 2021.

### **C. Average Annual Carryover**

70. CM Rule 42.01.g states that the Director “shall consider the . . . average annual carry-over for prior comparable water conditions . . .” Actual carryover volumes are from annual storage reports published by Water District 1. Actual carryover from 1992 through 2021 are sorted into two categories – below average (dry) and above average (wet). The categories are based on Heise natural flow volumes from April through September.

The 1992 to 2021 average natural flow volume is 3,827 thousand acre-feet (“KAF”).

Cat.	Year	Heise	A&B	AFRD2	BID	Milner	MID	NSCC	TFCC
		Apr–Sept (KAF)							
-----Acre-Feet-----									
	2001	1,968	9,902	4,217	37,430	26,854	55,132	42,421	26,917
	1992	2,001	11,966	11,548	31,977	28,896	16,928	19,439	3,590
	1994	2,319	82,885	26,894	54,136	45,902	102,823	128,356	38,686
	2007	2,320	62,739	7,962	32,138	37,761	61,744	66,807	39,999
	2021	2,622	73,688	988	61,327	27,448	65,393	121,946	13,581
	2013	2,721	55,563	21,477	54,350	34,740	55,374	135,658	23,419
Below	2002	2,775	30,192	8,932	74,573	14,662	102,139	133,702	46,825
Avg	2004	2,833	0	18,617	48,809	8,735	99,199	54,141	58,813
(Dry)	2003	2,931	9,401	3,904	52,550	6,944	82,895	169,674	0
	2016	3,012	89,845	58,689	84,302	46,050	108,482	283,728	21,497
	2000	3,059	69,436	20,787	107,425	45,762	161,423	205,510	56,536
	2010	3,108	96,172	113,895	101,620	59,628	184,940	324,712	46,243
	2005	3,195	36,665	99,097	90,190	37,593	150,623	365,001	68,352
	2015	3,208	88,616	57,344	73,449	47,322	130,942	208,274	44,957
	2012	3,385	68,109	41,395	88,526	42,214	119,361	198,853	72,267
	<b>Avg.</b>	<b>2,764</b>	<b>52,345</b>	<b>33,050</b>	<b>66,187</b>	<b>34,034</b>	<b>99,827</b>	<b>163,881</b>	<b>37,446</b>
	2019	3,930	88,506	106,833	113,278	48,393	203,434	406,865	94,193
	2020	3,962	95,105	99,782	110,640	52,750	168,213	360,234	66,609
	2006	4,079	89,311	107,682	102,873	58,755	182,612	365,672	78,562
	1993	4,116	102,493	123,508	154,461	60,332	264,713	300,942	104,424
	2008	4,288	91,835	104,219	124,128	62,359	182,722	414,171	70,192
	1995	4,447	103,295	167,451	159,214	75,451	258,028	476,312	68,576
Above	1998	4,498	100,817	144,057	157,265	69,384	227,726	494,385	156,433
Avg	2014	4,594	78,917	96,756	154,382	57,305	207,834	448,682	130,086
(Wet)	2009	4,613	104,174	145,530	125,688	66,935	204,581	426,779	95,533
	2018	4,796	93,754	115,442	92,727	50,776	163,465	351,483	54,285
	1999	4,949	93,354	121,793	168,545	67,147	243,322	453,706	191,501
	1996	5,583	105,209	145,019	150,358	70,250	253,786	522,790	111,459
	2017	6,139	110,348	219,940	168,293	67,754	258,106	528,880	169,862
	2011	6,347	102,139	107,618	104,915	64,487	246,699	504,578	129,757
	1997	7,007	102,539	114,684	134,906	65,307	242,758	464,411	136,926
	<b>Avg.</b>	<b>4,890</b>	<b>97,453</b>	<b>128,021</b>	<b>134,778</b>	<b>62,492</b>	<b>220,533</b>	<b>434,659</b>	<b>110,560</b>

Actual Carryover Volumes by Entity, Sorted by Heise Natural Flow (1992-2021).<sup>20</sup>

<sup>20</sup> In the Fourth Methodology Order, this table summarized data for the period 1994 to 2014 and adjusted WD 01 carryover values to remove water received for mitigation or water rented by the SWC entity to augment their supplies. This Fifth Methodology Order updates this chart with data for the period 1992 to 2021 and uses raw

71. In considering the principles articulated in CM Rule 42.01.g, the Director will project reasonable carryover shortfalls for members of the SWC. The following table represents the 2018 BLY diversion volumes and total reservoir storage space by entity. By dividing the total reservoir space by the 2018 diversion volume, a metric is established that describes the total number of seasons the entity’s reservoir space can supply water.

	A&B	AFRD2	BID	Milner	Minidoka	NSCC	TFCC
	-----Acre-Feet-----						
Projected Demand (2018 BLY)	64,192	453,890	262,211	58,417	354,851	1,026,661	1,121,717
Total Reservoir Space	137,626	393,550	226,487	90,591	366,554	859,898	245,930
Number of Seasons of Reservoir Space	2.1	0.9	0.9	1.6	1.0	0.8	0.2

Total Reservoir Space<sup>21</sup> in Comparison to Demand.<sup>22</sup>

**D. Reasonable Carryover**

**i. A&B**

72. A&B’s reservoir space has the lowest average annual rate of fill with the highest variability in fill. *See* Finding of Fact 69. In dry years, the potential exists that A&B’s actual carryover will be less than the maximum projected carryover need. *See* Finding of Fact 68 & 70. A&B has an approximate two-year water supply provided by its total available storage space. *See* Finding of Fact 71. Because of its lower rate of fill, it is likely A&B will experience carryover shortfalls in consecutive dry years. Based on the evaluation criteria in CM Rule 42.01.g, A&B’s reasonable carryover should be the maximum projected carryover need of 22,700 AF. *See* Finding of Fact 78.

**ii. AFRD2**

73. AFRD2 has the highest and most consistent reservoir rate of fill of any member of the SWC. AFRD2’s storage space fills 99% of the time and has a fill variability of 3%. As

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carryover values reported by WD 01. Raw numbers were used because adjusted numbers reduced the SWC’s potential entitlement to reasonable carryover.

<sup>21</sup> *See* R. Vol. 8 at 1373-74.

<sup>22</sup> This Fifth Methodology Order updates this chart with the new baseline year and calculates new number of seasons of reservoir space values.

shown in the Annual Percent Fill table in Finding of Fact 69 above, its space only failed to fill in 2004 (82%) and 2000 (99%). AFRD2 has a high likelihood of filling during multi-year droughts and after a dry year. *See* Finding of Fact 69. Therefore, any unfilled space in the fall will most likely fill. AFRD2 has an approximate one-year supply available in storage. *See* Finding of Fact 71. AFRD2's storage space only failed to fill in years when the natural flow volume at Heise was less than 3,100 KAF. In a dry year, AFRD2's historical carryover volume is often less than the maximum projected carryover need using the equation set forth in Finding of Fact 68 and 70. Based on the evaluation criteria for reasonable carryover in CM Rule 42.01.g, the reasonable carryover can be adjusted from the maximum projected carryover need without shifting the risk of shortage to the senior right holder. The historical average carryover of 16,700 AF in years when the natural flow volume at Heise was less than 3,100 KAF is the reasonable carryover for AFRD2. *See* Finding of Fact 78.

### **iii. BID & Minidoka**

74. Historically, in dry years, BID's and Minidoka's carryover volumes have been well above the maximum projected carryover need and it is unlikely that they will have reasonable carryover shortfalls in the future. *See* Finding of Fact 68 & 70; *see also* R. Vol. 37 at 7105. Based on the evaluation criteria for reasonable carryover in CM Rule 42.01.g, the reasonable carryover can be adjusted downward from the maximum projected carryover need without shifting the risk of shortage to the senior right holder. The reasonable carryover for BID and Minidoka is 0 AF. *See* Finding of Fact 78; *see also* R. Vol. 37 at 7105.

### **iv. Milner**

75. Similar to A&B, Milner's reservoir space has the second lowest average annual rate of fill of all entities and has a high degree of variability in fill. *See* Finding of Fact 69. In dry years, the potential exists that Milner's actual carryover will be less than the maximum projected carryover need. *See* Finding of Fact 68 & 70. Milner has an approximate one and one half water supply available in storage. *See* Finding of Fact 71. Because of its rate of fill, it is likely Milner will experience carryover shortfalls in consecutive dry years. Based on the evaluation criteria for reasonable carryover in CM Rule 42.01.g, the maximum projected carryover need of 16,100 AF is the reasonable carryover for Milner. *See* Finding of Fact 78.

### **v. NSCC**

76. NSCC has a near-average annual rate of fill in comparison to all entities and an approximate one-year water supply available in storage. *See* Findings of Fact 69 & 71. In dry years, the potential exists that its maximum projected carryover need will be less than its actual carryover. *See* Finding of Fact 68 & 70. Based on the evaluation criteria in CM Rule 42.01.g, the reasonable carryover for NSCC is 113,300 AF. *See* Finding of Fact 77.

### **vi. TFCC**

77. TFCC has a near average annual rate of fill in comparison to all entities, but only 20% of a single year's water supply is available in storage. TFCC's storage space fills 97% of

the time and has a fill variability of 8%. *See* Findings of Fact 69 & 71. In dry years, the potential exists that its maximum projected carryover need will be less than its actual carryover. *See* Finding of Fact 68 & 70. Based on the evaluation of the criteria in CM Rule 42.01.g, the reasonable carryover can be adjusted from the maximum projected carryover need without shifting the risk of shortage to the senior right holder. The historical average carryover in dry years of 37,400 AF is the reasonable carryover for TFCC. *See* Finding of Fact 78.

78. Reasonable carryover values for the SWC members are as follows:

	Reasonable Carryover (Acre-Feet)
A&B	22,700
AFRD2	16,700
BID	0
Milner	16,100
Minidoka	0
NSCC	113,300
TFCC	37,400

**E. Reasonable Carryover Shortfall**

79. Reasonable carryover shortfall is the numerical difference between reasonable carryover and actual carryover, calculated at the conclusion of the irrigation season. Actual carryover is defined as the storage allocation minus the total storage use plus or minus any adjustments. Examples of adjustments include SWC water placed in the rental pool and SWC private leases. Adjustments are unique to each irrigation season and will be evaluated each year. Any storage water deliveries to entities other than the SWC for purposes unrelated to the original right will be adjusted so that the water is not included as a part of the SWC carryover volume. Water that is purchased or leased by an SWC member may become part of the carryover shortfall obligation. *See e.g.* R. Vol. 38 at 7201, n. 11 (Eighth Supplemental Order). Conversely, actual carryover must be adjusted to assure that water supplied by a SWC member to private leases or to the rental pool will not increase the reasonable carryover shortfall obligation to the same SWC member.

80. Reasonable carryover shortfall is calculated as follows:

$$\text{Reasonable Carryover Shortfall} = \text{Actual Carryover} - \text{Reasonable Carryover}$$

**F. Determination of Curtailment Date**

81. The Eastern Snake Plain Aquifer Model (“ESPAM”) is the best scientific tool available to simulate aquifer and Snake River responses to stresses applied to the aquifer, such as ground water pumping from a well. Curtailment of junior ground water pumpers in response to the SWC Delivery Call would result in a reduction in the withdrawal of groundwater and a corresponding reduction in aquifer stress. ESPAM simulates the effects of the reduction in



aquifer stress and calculates predicted increases in aquifer discharge to the Snake River resulting from the curtailment of ground water pumping from the ESPA.

82. ESPAM simulations can be either steady-state or transient.

83. Merriam-Webster's Dictionary defines steady-state as "a state or condition of a system or process ... that does not change in time." *Steady state*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/steady-state> (April 19, 2023). A steady-state ESPAM simulation can only model increases in aquifer discharge to the Snake River resulting from continuous curtailments of an identical magnitude and location until the impacts of curtailment are fully realized. For example, a steady-state analysis of the curtailment of 1,000 acres, assumes that irrigation of the same 1,000 acres is curtailed every year at the same rate of consumptive use, until the impacts of that curtailment reach a steady state, or no longer change from year to year.

84. Steady-state analysis does not calculate the time to reach steady-state conditions nor describe the seasonal timing of the impacts. For the benefits of curtailment predicted by steady-state analysis to be realized by the river, the curtailment must occur continuously until steady-state is achieved. The assumption of continuous curtailment does not reflect reality in the SWC Delivery Call. Curtailments ordered as prescribed in the methodology are neither continuous nor long-term. Irrigation with ground water does not occur at a constant rate throughout the year nor from year to year. It is important to predict what benefits to the river are realized during the irrigation season in which injury has been determined. A steady-state ESPAM simulation cannot predict what benefits are realized during the irrigation season. In contrast, a transient ESPAM simulation will predict the timing of changes in river reach gains.

85. ESPAM was calibrated using one-month stress periods and can simulate a single (or partial) irrigation season of curtailment and predict the resulting increase in aquifer discharge to the Snake River during the same irrigation season using a transient simulation. In the context of this proceeding, the transient approach identifies the junior ground water rights that must be curtailed to produce increases in Snake River flows sufficient to offset material injury in the current irrigation season.

86. Only 9% to 15% of the steady state response is predicted to accrue to the near Blackfoot to Minidoka reach between May 1 and September 30 of the same year.<sup>23</sup> Fifty percent of the steady-state response is predicted to accrue at the near Blackfoot to Minidoka reach within approximately four years. Ninety percent of the steady-state response is predicted to accrue at the near Blackfoot to Minidoka reach within approximately 24 years.

87. A curtailment to a priority date calculated by the steady state analysis method used in the Fourth Methodology Order will only offset 9% to 15% of the predicted IDS. In contrast, curtailment to a priority date calculated with a transient simulation of a single season curtailment will offset the full predicted IDS unless the shortfall exceeds the accruals to the near

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<sup>23</sup> The near Blackfoot to Minidoka reach is the reach of the Snake River from which the SWC diverts.

Blackfoot to Minidoka reach by the end of the irrigation season with curtailment of all junior ground water rights.

88. Steady-state simulations are appropriate for evaluating the average annual impact of aquifer stresses that have been, or will be, applied for decades (i.e., ground water pumping year after year, or continuous curtailment to the same date every year). The steady-state simulation of continuous curtailment applied in the Fourth Amended Methodology Order does not simulate the short-term curtailments prescribed in the methodology. The methodology prescribes curtailment only in years with a predicted IDS or carryover shortfall and prescribes the determination of a curtailment priority date that varies with the magnitude of the predicted shortfall.

89. Transient simulations are necessary to evaluate the impacts of aquifer stresses applied for short periods of time (i.e. short-term curtailments with varying priority dates). Transient simulations are necessary to simulate the short-term curtailments prescribed in the methodology.

## CONCLUSIONS OF LAW

1. This order contains the methodology by which the Director will determine material injury to RISD and reasonable carryover to members of the SWC.

2. “The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.” Idaho Code § 67-5251(5); IDAPA 37.01.01.600.

3. Idaho Code § 42-602 states that, “The director of the department of water resources shall have discretion and control of the distribution of water from all natural sources . . . . The director of the department of water resources shall distribute water . . . in accordance with the prior appropriation doctrine.” According to the Hearing Officer, “It is clear that the Legislature did not intend to grant the Director broad powers to do whatever the Director might think right. However, it is clear also that the Legislature [in Idaho Code § 42-602] did not intend to sum up water law in a single sentence of the Director’s authority.” R. Vol. 37 at 7085. “Given the nature of the decisions which must be made in determining how to respond to a delivery call, there must be some exercise of discretion by the Director.” *American Falls Res. Dist. No. 2 v. Idaho Dept. Water Resources*, 143 Idaho 862, 875, 154 P.3d 433, 446 (2007).

4. “The prior appropriation doctrine is comprised of two bedrock principles—that the first appropriator in time is the first in right and that water must be placed to a beneficial use.” *In Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A & B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2012). “The concept that beneficial use acts as a measure and limit upon the extent of a water right is a consistent theme in Idaho water law.” *Id.*; *American Falls*, 143 Idaho at 879, 154 P.3d at 450 (stating that while an appropriation for a beneficial use is “a valuable right entitled to protection . . . . Nevertheless, that property right is still subject to other requirements of the prior appropriation doctrine.”); *Idaho Ground Water Assoc. v. Idaho Dep't of Water Res.*, 160 Idaho 119, 131, 369 P.3d 897, 909

(2016) (explaining the “policy of beneficial use” serves as a “limit on the prior appropriation doctrine.”).

5. “Concurrent with the right to use water in Idaho ‘first in time,’ is the obligation to put that water to beneficial use.” *American Falls*, 143 Idaho at 880, 154 P.3d at 451; see *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 652, 315 P.3d at 840 (quoting *American Falls*, 143 Idaho at 876, 154 P.3d at 447) (referring to “the constitutional requirement that priority over water be extended only to those using the water”). “It is the settled law of this state that no person can, by virtue of a prior appropriation, claim or hold more water than is necessary for the purpose of the appropriation, and the amount of water necessary for the purpose of irrigation of the lands in question and the condition of the land to be irrigated should be taken into account.” *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 650, 315 P.3d at 838 (quoting *Washington State Sugar v. Goodrich*, 27 Idaho 26, 44, 147 P. 1073, 1079 (1915)).

6. “[T]he policy of securing the maximum use and benefit, and least wasteful use of Idaho’s water resources, has long been the policy in Idaho.” *Idaho Ground Water Assoc.*, 160 Idaho at 131, 369 P.3d at 909 (citing *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 808, 252 P.3d 71, 89 (2011)). The Idaho Constitution enunciates a policy of promoting “optimum development of water resources in the public interest.” Idaho Const. Art. XV, § 7; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 584, 513 P.2d 627, 636 (1973). “There is no difference between securing the maximum use and benefit and least wasteful use of this State’s water resources and the optimum development of water resources in the public interest. Likewise, there is no material difference between ‘full economic development’ and the ‘optimum development of water resources in the public interest.’ They are two sides of the same coin. Full economic development is the result of the optimum development of water resources in the public interest.” *Clear Springs*, 150 Idaho at 809, 252 P.3d at 90. “The policy of securing the maximum use and benefit, and least wasteful use, of the State’s water resources applies to both surface and ground waters, and it requires that they be managed conjunctively.” *Id.*

7. “Conjunctive administration ‘requires knowledge by the [Department] of the relative priorities of the ground and surface water rights, how the various ground and surface water sources are interconnected, and how, when, where and to what extent the diversion and use of water from one source impacts the water flows in that source and other sources.’ . . . . That is precisely the reason for the CM Rules and the need for analysis and administration by the Director.” *American Falls*, 143 Idaho at 877, 154 P.3d at 448.

8. The CM Rules incorporate all principles of the prior appropriation doctrine as established by Idaho law. *American Falls*, 143 Idaho at 873, 154 P.3d at 444; CM Rule 20.02, 10.12.

9. While the presumption under Idaho law is that an appropriator is entitled to his decreed water right and the CM Rules may not be applied to require a senior appropriator to demonstrate an entitlement to the water in the first place, there may be post-adjudication factors relevant to the determination of how much water is actually needed in responding to a delivery call. *American Falls*, 143 Idaho at 877-78, 154 P.3d at 448-49. Under the CM Rules and Idaho law, the Director has the “authority and responsibility to investigate claims when delivery calls

are made,” and the “authority to evaluate the issue of beneficial use in the administration context.” *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 652, 315 P.3d at 840. As the Idaho Supreme Court stated, “[w]hile the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute rule without exception . . . the Idaho Constitution and statutes do not permit waste and require water to be put to beneficial use or be lost.” *Idaho Ground Water Assoc.*, 160 Idaho at 131, 369 P.3d at 909 (quoting *American Falls*, 143 Idaho at 880, 154 P.3d at 433). “[T]he Director must have some discretion to balance these countervailing considerations in a delivery call.” *Id.* “If this Court were to rule the Director lacks the power in a delivery call to evaluate whether the senior is putting the water to beneficial use, we would be ignoring the constitutional requirement that priority over water be extended only to those using the water.” *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 652, 315 P.3d at 840 (quoting *American Falls*, 143 Idaho at 876, 154 P.3d at 447).

10. In responding to a delivery call under the CM Rules, the Director “may employ a baseline methodology as a starting point for considering material injury,” provided the baseline methodology otherwise comports with the prior appropriation doctrine as established by Idaho law. *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 653, 315 P.3d at 841; see *Methodology Remand Order* at 17.

11. Once the Director determines “that material injury is occurring or will occur,” junior appropriators subject to the delivery call bear “the burden of proving that the call would be futile or to challenge, in some other constitutionally permissible way, the senior’s call.” *American Falls*, 143 Idaho at 878, 154 P.3d at 449; *Methodology Remand Order* at 31. Junior appropriators have the burden of proving by clear and convincing evidence that the delivery call is futile or otherwise unfounded. *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 653, 315 P.3d at 841.

12. “This case illustrates the tension between the first in time and beneficial use aspects of the prior appropriation doctrine.” *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 650, 315 P.3d at 838. The Idaho Supreme Court has in this case “recognized the critical role of the Director in managing the water resources to accommodate both first in time and beneficial use aspects: ‘Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public’s interest in this valuable commodity, lies an area for the exercise of discretion by the Director.’” *Id.* at 651, 315 P.3d at 839 (quoting *American Falls*, 143 Idaho at 880, 154 P.3d at 451). Thus, in this case the Director may use “a baseline methodology, both as a starting point for consideration of the Coalition’s call and in determining the issue of material injury.” *Id.* at 650-51, 315 P.3d at 838-39. However, “[i]f changing conditions establish that material injury is greater than originally determined pursuant to the baseline analysis, then adjustments to the mitigation obligation of the juniors must be made when the Director undertakes his mid-season calculations.” *Methodology Remand Order* at 18.

13. In the context of conjunctive administration, the Director’s methodology for projecting material injury does not impose an obligation upon members of the SWC to reprove

their water rights. To the extent water is available, members of the SWC are authorized to divert and store water in accordance with the terms of their licenses or decrees. Nothing established herein reduces that authorization. The question that the CM Rules require the Director to answer in this proceeding is, when water is not available to fill the water rights of the SWC, how much water is reasonably necessary for the SWC to accomplish the beneficial purpose of raising crops; because what is needed to irrigate crops may be less than the decreed or licensed quantities. *American Falls*, 143 Idaho at 880, 154 P.3d at 451; see *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 650, 315 P.3d at 838 (quoting *Washington State Sugar*, 27 Idaho at 44, 147 P. at 1079) (“[i]t is the settled law of this state that no person can, by virtue of a prior appropriation, claim or hold more water than is necessary for the purpose of the appropriation”). Again, “[t]he concept that beneficial use acts as a measure and limit upon the extent of a water right is a consistent theme in Idaho water law.” *Id.*

14. Holders of senior-priority water rights may receive less than their licensed or decreed quantities and not suffer material injury within the meaning of the CM Rules. As a result, in-season demand should be viewed in light of reasonableness and optimum development of water resources in the public interest. CM Rules 20 and 42; *American Falls*, 143 Idaho at 876-80, 154 P.3d at 447-51; *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 650-652, 315 P.3d at 838-40.

15. Here, the Director has established a methodology for determining material injury to members of the SWC. The methodology predicts material injury to RISD by taking the difference between RISD and the FS. The years 2000 through 2021 were analyzed to select the BLY because the period of years captured current irrigation practices in a dry climate. Based upon evaluation of the record, members of the SWC were exercising more reasonable efficiencies during this time period than during the 1990s when supplies were more plentiful. During periods of drought when junior ground water users are subject to curtailment, members of the SWC should exercise reasonable efficiencies to promote the optimum utilization of the State’s water resources. CM Rules 20 and 42; *American Falls*, 143 Idaho at 876-80, 154 P.3d at 447-51; *Clear Springs*, 150 Idaho at 807-10; 252 P.3d at 88-91; *In re Distribution of Water to Various Water Rights Held by or for the Ben. of A&B Irr. Dist.*, 155 Idaho at 650-652, 315 P.3d at 838-40.

16. At this time, with the recognition that the methodology is subject to adjustment and refinement, RISD will be equal to the historic demands associated with the BLY (2018) and will be corrected during the season to account for variations in climate and water supply between the BLY and actual conditions.

17. Recognizing that climate and surface water supplies (natural flow and storage) are inherently variable, the Director’s predictions of material injury to RISD and reasonable carryover are based upon the best available information and the best available science, in conjunction with the Director’s professional judgment as the manager of the State’s water resources. Recognizing his ongoing duty to administer the State’s water resources, the Director should use available data, and consider new analytical methods or modeling concepts, to evaluate the methodology. As more data is gathered and analyzed, the Director will continue to

review and refine the process of predicting and evaluating material injury. The methodology will continue to be adjusted if the data supports a change.

18. If the Director predicts that the SWC will be materially injured because of a demand shortfall prediction, either in the preseason or in the midseason, the demand shortfall represents a mitigation obligation that must be borne by junior ground water users. If mitigation water in the amount of the projected RISD shortfall cannot be secured or optioned by junior ground water users to the satisfaction of the Director, the Director will curtail junior ground water users to make up any deficit. *See Order on Pet. for Jud. Rev.*, at 19, *A&B Irrigation District v. Idaho Dairymen's Association, Inc.*, No. 2008-0000551 (Gooding Cnty. Dist. Ct. Idaho July 24, 2009),

19. In previous years, the Director used steady-state modeling when determining the curtailment priority date. The Department now has multiple years of experience with the methodology to better understand the impact of applying steady-state modeling versus transient modeling to determine a curtailment priority date that would supply adequate water to the senior water right holders. While the first version of the ESPA groundwater flow model was not calibrated at a time-scale that supported in-season transient modeling, the current version was calibrated using monthly stress periods and half-month time steps, a refinement that facilitates in-season transient modeling for calculating the response to curtailment of groundwater use. As part of the Director's ongoing obligation to evaluate the methodology, the Director must evaluate whether the use of steady-state continues to be supportable.

20. In surface water administration, uses by holders of junior priority surface water rights are curtailed until the senior surface water rights are fully satisfied, absent a futile call and if the senior surface water users need the water to accomplish a beneficial use. In other words, under surface water administration, junior surface water rights are generally curtailed unless the senior gets water in the quantity and at the time and place required.

21. Rule 43 of the CM Rules mandates that when the Director evaluates a mitigation plan, the mitigation plan must ensure that water is delivered to holders of senior priority surface water rights in both the quantity and at the time and place required by the senior. In considering a proposed mitigation plan pursuant to Rule 43, the Director must evaluate:

**b.** Whether the mitigation plan will provide replacement water, *at the time and place required by the senior-priority water right*, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source *at such time and place as necessary* to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods.

**c.** Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right *when needed during a time of shortage* even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for

multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.

IDAPA 37.01.03.11.043.b-c (emphasis added). In other words, there is an assumption that senior water right holders calling for delivery of water under the CM Rules will receive, by curtailment or by mitigation, “replacement water at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal . . . .” Only in a mitigation plan can “multi-season accounting of ground water withdrawals” be employed, and even then, the plan must “assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.”

22. The Director has an obligation to address a mitigation deficiency in the year it occurs. Mem. Decision & Order on Pet. for Jud. Rev., at 10, *Rangen, Inc. v. Idaho Dep’t of Water Res.*, No. CV-2014-2446 (Twin Falls Cnty. Dist. Ct. Idaho Dec. 3, 2014); Mem. Decision & Order, at 8–9, *Rangen, Inc. v. Idaho Dep’t of Water Res.*, No. CV-2014-4970 (Twin Falls Cnty. Dist. Ct. Idaho June 1, 2015).

23. As described in Finding of Fact 87, curtailment to a priority date calculated by the steady state analysis method used in the Fourth Methodology Order will only offset 9% to 15% of the predicted IDS. In contrast, curtailment to a priority date calculated with a transient simulation of a single season curtailment will offset the *full* predicted IDS unless the shortfall exceeds the accruals to the near Blackfoot to Minidoka reach by the end of the irrigation season with curtailment of all junior ground water rights. This methodology order depends on an annual evaluation of material injury and should also employ curtailment and or mitigation that supplies replacement water at the time and place required by the senior-priority water right in a quantity sufficient to offset the depletive effect of ground water withdrawal and to assure protection of the senior-priority right. Curtailment dates, periodically determined at time of recalculating in-season demand shortfall (IDS), should be calculated by a transient model simulation that will return the full quantity of water to the senior priority rights at the time and place required.

24. As described in Conclusion of Law 18, junior ground water users with approved mitigation plans to deliver storage water as mitigation must, to the satisfaction of the Director, secure or option mitigation water to avoid curtailment. By requiring that junior ground water users secure mitigation water or have options to acquire water in place during the season of need, the Director ensures that the SWC does not carry the risk of shortage to their supply. By not requiring junior ground water users to deliver or assign mitigation water until the Time of Need, the Director ensures that junior ground water users supply only the amount of mitigation water necessary to satisfy the RISD. All approved methods of mitigation shall be considered in the Director’s review of projected RISD shortfall.

25. Unless there is reasonable certainty that junior ground water users can secure the predicted volume of water and provide that water at the Time of Need, the protection afforded to the senior water right holders is compromised. The risk of shortage is then impermissibly shouldered by the SWC. Members of the SWC should have certainty entering the irrigation

season and at midseason that mitigation water will be delivered or assigned at the Time of Need, or curtailment of junior ground water rights will be ordered.

26. Because climate and the supply that the SWC appropriated (natural flow and storage) are inherently variable, the Director cannot and should not insulate the SWC against all shortages. The Director can, however, protect the SWC against reasonably predicted shortages to RISD.

27. Currently, the USBR and USACE's Joint Forecast is an indispensable predictive tool at the Director's disposal for predicting material injury to RISD. Given current forecasting techniques, the earliest the Director can predict material injury to RISD with reasonable certainty is soon after the Joint Forecast is issued in early April. The pre-irrigation season supply forecast for A&B and Milner can be predicted solely from the Joint Forecast. To improve the accuracy of prediction, the pre-irrigation season supply forecast for AFRD2, BID, Minidoka, NSCC, and TFCC will currently be predicted from both the Joint Forecast and from flow data at Box Canyon.<sup>24</sup>

28. By shifting the April Forecast Supply prediction curve down one standard error of estimate, the Director purposely underestimates the water supply that is predicted. The Director further guards against RISD shortage by using the 2018 BLY, which has above average diversions, above average ET, below average in-season precipitation, and above average growing degree days. The 2018 BLY represents a year in which water supply did not limit diversions. The Director's prediction of material injury to RISD is purposely conservative. While it may ultimately be determined after final accounting that less mitigation water was owed than was provided, this is an appropriate burden for junior appropriators to carry. Idaho Const. Art. XV, § 3; Idaho Code § 42-106. Shifting the prediction curve down one standard error of estimate and adoption of a BLY that uses above average diversions, above average temperatures and ET and below average precipitation is necessary to protect senior rights if the Director administers to an amount less than the full decreed quantity of the SWC's rights. *Methodology Remand Order* at 33, 35.

29. The Director will review, at the end of the season, the volume and efficiencies of application of surface water, the amount of mitigation water provided by junior ground water users, and may, in the exercise of his professional judgment, readjust the reasonable carryover shortfalls to reflect these considerations.

30. "Storage water is water held in a reservoir and is intended to assist the holder of the water right in meeting their decreed needs." *American Falls*, 143 Idaho at 878, 154 P.3d at 449. "Carryover is the unused water in a reservoir at the end of the irrigation year which is retained or stored for future use in years of drought or low-water." *Id.* Under Idaho Code, "[o]ne may acquire storage water rights and receive a vested priority date and quantity, just as with any other water right," but "[t]here is no statutory provision for obtaining a decreed right to 'carryover' water." *Id.* Rather, carryover is a "component of the storage right." Order on Pet. for Jud. Rev., at 20, *A&B Irrigation District v. Idaho Dairymen's Association, Inc.*, No. 2008-

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<sup>24</sup> The method for predicting the natural flow supply may be subject change based upon improved predictive models.

FIFTH AMENDED FINAL ORDER REGARDING METHODOLOGY FOR DETERMINING MATERIAL INJURY TO REASONABLE IN-SEASON DEMAND AND REASONABLE CARRYOVER—Page 37



0000551 (Gooding Cnty. Dist. Ct. Idaho July 24, 2009). Storage carryover is “permissible . . . absent abuse.” *American Falls*, 143 Idaho at 880, 154 P.3d at 451.

31. The storage reservoirs implicated in this proceeding were intended to provide supplemental supplies of water “to create a buffer against the uncertainty of the weather.” *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* (April 29, 2008) at 6. “The history of the development of the reservoir system, most recently Palisades, makes it clear that storage of water was a primary purpose to prevent disaster during periods of shortage as have been experienced in the recent past.” *Id.* at 60. The purpose of carryover also is “insurance against the risk of future shortage.” Order on Pet. for Jud. Rev., at 20, *A&B Irrigation District v. Idaho Dairymen’s Association, Inc.*, No. 2008-0000551 (Gooding Cnty. Dist. Ct. Idaho July 24, 2009).

32. CM Rule 42.01 sets forth factors the Director “may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste.” CM Rule 42.01 does not limit the Director’s determination of reasonable carryover to consideration of the factors enumerated in CM Rule 42.01g, but only requires that the Director consider those enumerated factors. One such factor is “[t]he extent to which the requirements of the holder of a senior priority water right could be met with the user’s existing facilities and water supplies.” CM Rule 42.01g. This factor is qualified, however, by the provision that “the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years.” CM Rule 42.01g. Thus, CM Rule 42.01g does not require water right holders to exhaust their storage water supplies prior to making a delivery call under the CM Rules. This is consistent with the purposes of the storage reservoirs and the carryover components of the storage water rights.

33. In considering CM Rule 42.01g in *American Falls*, the Idaho Supreme Court framed the SWC’s challenge to the “reasonable carryover” provision as presenting the question of whether the holders of storage water rights are “entitled to insist on all available water to carryover for future years in order to assure that their full storage water is met (regardless of need),” *American Falls*, 143 Idaho at 879, 154 P.3d at 450, and answered this question in the negative:

At oral argument, one of the irrigation district attorneys candidly admitted that their position was that they should be permitted to fill their entire storage water right, regardless of whether there was any indication that it was necessary to fulfill current or future needs and even though the irrigation districts routinely sell or lease the water for uses unrelated to the original rights. This is simply not the law of Idaho. While the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute rule without exception. As previously discussed, the Idaho Constitution and statutes do not permit waste and require water to be put to beneficial use or be lost. *Supra*, paragraph 11.

*Id.* at 880, 154 P.3d at 451.

34. As discussed in the Findings of Fact, reasonable carryover is determined by projecting the water supply for the system. This is accomplished by projecting the 2002/2004 natural flow and average annual storage fill and the 2018 demand. Next, the Director examines the average annual rate of fill of each SWC entity's reservoir space to determine each entity's relative probability of fill. Finally, the Director examines the average annual carryover for prior comparable water conditions by reviewing Heise natural flow.

35. On or before November 30, the Department will issue estimates of actual carryover and reasonable carryover shortfall volumes for all members of the SWC. These estimates will establish the obligation of junior ground water users in providing water to the SWC for reasonable carryover shortfall. Fourteen (14) days following the issuance by the Department of reasonable carryover short fall obligations, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights.

36. Recognizing that reservoir space held by members of the SWC may fill, and to prevent the waste of water, junior ground water users are not required to deliver or assign the volume of reasonable carryover until after the Day of Allocation (defined in footnote 27, *infra*). Junior ground water users are obligated to hold the secured or optioned mitigation water until reservoir space held by the SWC fills. If the reservoir space does not fill, junior ground water right holders must deliver or assign the secured or optioned mitigation water to the senior water right holders up to the amount of storage space that did not fill.

## **ORDER**

Consistent with the forgoing, the Director HEREBY ORDERS that, for purposes of determining material injury to RISD and reasonable carryover, the following steps will be taken:

1. Step 1: By April 1, members of the SWC will submit electronic shape files to the Department delineating the total anticipated irrigated acres for the upcoming year within their water delivery boundary or confirm in writing that the existing electronic shape file submitted by SWC has not varied by more than five percent. Department staff will review submitted shapefiles and modify them as necessary to ensure that: (1) the total acreage count does not exceed the decreed number of acres; (2) all of the irrigated land is located within the decreed place of use; and (3) acres are not counted more than once due to overlapping polygons within a shape file or between shape files submitted by different SWC members. Because the SWC members can best determine the irrigated acres within their service area, the SWC should be responsible for submitting the information to the Department. If this information is not timely submitted, the Department will determine the total irrigated acres based upon past cropping patterns and current satellite and/or aerial imagery. If a SWC member fails or refuses to identify the number of irrigated acres within its service area by April 1, the Department will be cautious about recognizing acres as being irrigated if there is uncertainty about whether the acres are or will be irrigated during the upcoming irrigation season. The Department will electronically post

electronic shape files for each member of the SWC for the current water year for review by the parties. In determining the total irrigated acreage, the Department may account for supplemental ground water use. The Department currently does not have sufficient information to accurately determine the contribution of supplemental ground water to lands irrigated with surface water by the SWC. If and when reliable data is available to the Department, the methodology will be amended to account for the supplemental ground water use.

2. If the acreage count is under reported by more than five percent of the irrigated acreage limit of the water right, then the Department will assess the impact of this reduction in use of the water right on any mitigation requirement.

3. Step 2: Typically within the first two weeks of April, the USBR and USACE issue their Joint Forecast that predicts an unregulated inflow volume at the Heise Gage for the period April 1 through July 31. Within fourteen (14) days after issuance of the Joint Forecast, the Director will issue a final order predicting the April FS for the water year for each SWC entity. The Director will compare the April FS for each SWC entity to the BD for each SWC entity to determine if an in-season demand shortfall (“IDS”) is anticipated for the upcoming irrigation season. The April FS for each SWC entity is the sum of the forecasted natural flow supply and the forecasted storage allocation for each SWC entity. The forecasted natural flow supply will be computed with regression algorithms. The forecasted storage allocation will be determined by comparing storage accruals in an analogous year(s). A transient ESPAM simulation will be run to calculate the curtailment priority date predicted to produce a volume of water equal to the IDS in the near Blackfoot to Minidoka reach between May 1 and September 30 of the current year. Curtailment will be simulated within the area of common ground water supply as described by CM Rule 50.01.

4. Step 3: By May 1, or within fourteen (14) days from issuance of the final order predicting the April FS, whichever is later in time, junior ground water users with approved mitigation plans for delivery of water must secure, to the satisfaction of the Director, a volume of water equal to their proportionate share of the April IDS unless the April IDS is revised as explained below in paragraph 6. If junior ground water users secured water for a reasonable carryover shortfall to an individual SWC member in the previous year, the current-year mitigation obligation to the individual SWC member will be reduced by the quantity of water secured for the reasonable carryover shortfall. The secured water will not be required to be delivered to the injured members of the SWC until the Time of Need.

5. Step 4: As soon as practical after the deadline for junior ground water users with approved mitigation plans to provide notice of secured water, the Director will issue an order curtailing junior ground water users who: (1) do not have approved mitigation plans; (2) fail to secure the required water consistent with their approved mitigation plans; or (3) otherwise fail to comply with their approved mitigation plans.<sup>25</sup>

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<sup>25</sup> This presumes that any reasonable carryover obligation has been met, and that junior ground water users are not already under prior curtailment from deficiencies in meeting the previous year’s obligation.

6. If, at any time prior to the Director's final determination of the April FS, the Director can determine with certainty that any member of the SWC has diverted more natural flow than predicted, or has accrued more storage than predicted, the Director will revise his initial, projected demand shortfall determination.

7. Step 5: If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01's initial storage report, which typically occurs soon after the Day of Allocation,<sup>26</sup> the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC. The amount of reasonable carryover to be provided shall not exceed the empty storage space on the Day of Allocation for that entity. If water is owed in addition to the reasonable carryover shortfall volume, this water shall be delivered or assigned to members of the SWC at the Time of Need, described below. The Time of Need will be no earlier than the Day of Allocation.

8. Step 6: Approximately halfway through the irrigation season, but following the events described in Step 5, the Director will, for each member of the SWC: (1) recalculate RISD; (2) issue a revised FS and (3) estimate the Time of Need date.<sup>27</sup>

9. RISD will be calculated utilizing the project efficiency, BD, and the cumulative actual CWN determined up to that point in the irrigation season. The cumulative CWN volume will be calculated for all land irrigated with surface water within the boundaries of each member of the SWC. Volumetric values of CWN will be calculated using ET and precipitation values from the USBR's AgriMet program, irrigated areas provided by each entity, and crop distributions based on NASS data.

10. The FS for each SWC is the sum of the year-to-date actual natural flow diversions, the forecasted natural flow supply for the remainder of the season, and the storage allocation for each member of the SWC. The forecasted natural flow supply for the remainder of the season will be based on regression analysis. The storage allocation will be based on the actual preliminary storage allocations issued by the BOR and Water District 01. If the BOR and Water District 01 have not yet allocated stored water to spaceholders, the Department will predict the storage allocations based on an analogous year(s).

11. The calendar day determined to be the Time of Need is established by predicting the day in which the remaining storage allocation will be equal to reasonable carryover. The Time of Need will not be earlier than the Day of Allocation.

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<sup>26</sup> The Day of Allocation is the time in the irrigation season when the Water District 01 watermaster can issue allocations to storage space holders after the reservoir system has achieved its maximum physical fill, maximum water right accrual, and any excess spill past Milner Dam has ceased. Tr. p. 902, lns. 7-25; p. 903, lns. 1-10.

<sup>27</sup> At the earliest established Time of Need for any member of the SWC, junior ground water users are required to provide remaining mitigation to all materially injured members of the SWC.

12. This information will be used to recalculate RISD and adjust the projected IDS for each member of the SWC. The Director will then issue revised RISD and DS values. Any increase to the projected IDS for each SWC entity is an additional mitigation obligation of the junior ground water users.

13. Upon a determination of an additional mitigation obligation, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to secure a volume of storage water or to conduct other approved activities pursuant to an approved mitigation plan that will deliver the additional mitigation obligation water to the injured members of the SWC at the Time of Need. If junior ground water users fail or refuse to submit this information within fourteen (14) days from issuance of a Step 6 order, the Director will issue an order curtailing junior ground water users.<sup>28</sup> A transient ESPAM simulation will be run to determine the priority date to produce the necessary additional mitigation obligation volume by September 30 of the same year. Curtailment will be simulated within the area of common ground water supply, as described by CM Rule 50.01.

14. Step 7: Shortly before the estimated Time of Need, but following the events described in Steps 5 and 6, the Director will, for each member of the SWC: (1) recalculate RISD; (2) issue a revised FS; and (3) establish the Time of Need. The revised FS for each SWC entity is the sum of the year-to-date actual natural flow diversions, the forecasted natural flow supply for the remainder of the season, and the storage allocation for each member of the SWC. The forecasted natural flow supply for the remainder of the season will be based on analogous year(s) with similar Blackfoot to Milner reach gains. The storage allocation will be based on the actual preliminary storage allocations issued by the BOR and Water District 01.

15. This information will be used to recalculate RISD and adjust the projected IDS for each member of the SWC. RISD will be calculated utilizing the project efficiency, BD, and the cumulative actual CWN determined up to that point in the irrigation season. The Director will then issue revised RISD and IDS values.

16. A transient ESPAM simulation will be run to determine the priority date of water rights that must be curtailed to produce the demand shortfall volume by September 30 of the same year. Curtailment will be simulated within the area of common ground water supply, as described by CM Rule 50.01.

17. Step 8: At the Time of Need, junior ground water users are required to deliver to each injured member of the SWC the Step 7 revised IDS calculated at the Time of Need. Alternatively, any additional mitigation obligation calculated in Step 6 and Step 7 can be satisfied from each SWC member's reasonable carryover if (a) the reasonable carryover exceeds the additional mitigation obligation, and (b) the junior ground water users secure sufficient water to replace the reasonable carryover pursuant to an approved mitigation plan.

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<sup>28</sup> This presumes that any reasonable carryover obligation has been met, and that junior ground water users are not already under prior curtailment from deficiencies in meeting the previous year's obligation.

18. The Director will review, at the end of the season, the volume and efficiencies of application of surface water, the amount of mitigation water delivered by junior ground water users, and may, in the exercise of his professional judgment, readjust the reasonable carryover shortfalls to reflect these considerations.

19. Step 9: Following the end of the irrigation season (on or before November 30), the Department will determine the total actual volumetric demand and total actual CWN for the entire irrigation season. This information will be used for the analysis of reasonable carryover shortfall, selection of future BLY, and for the refinement and continuing improvement of the method for future use.

20. On or before November 30, the Department will issue estimates of actual carryover and reasonable carryover shortfall volumes for all members of SWC. These estimates will be based on, but not limited to, the consideration of the best available water diversion and storage data from Water District 01, return flow monitoring, comparative years, and RISD. These estimates will establish the obligation of junior ground water users in providing water to the SWC for reasonable carryover shortfall. Fourteen (14) days following the issuance by the Department of reasonable carryover short fall obligations, junior ground water users will be required to establish, to the satisfaction of the Director, their ability to supply a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for all injured members of the SWC. If junior ground water users cannot provide this information, the Director will issue an order curtailing junior ground water rights. A transient ESPAM simulation will be run to determine the priority date of water rights that must be curtailed to produce the reasonable carryover shortfall volume by September 30 of the following year. Curtailment will be simulated within the area of common ground water supply, as described by CM Rule 50.01.

IT IS FURTHER ORDERED that this Fifth Methodology Order supersedes all previously issued methodology orders in this matter.

Dated this 21st day of April 2023.



GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 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  <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></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  <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a>  <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a></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  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></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  <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>  <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Kathleen Marion Carr  US Dept. Interior  960 Broadway Ste 400  Boise, ID 83706  <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <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  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard  US Bureau of Reclamation  1150 N Curtis Road  Boise, ID 83706-1234  <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>

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<p>Robert L. Harris HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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Megan Jenkins  
Administrative Assistant II

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

**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-DC-2010-001

**FINAL ORDER REGARDING  
APRIL 2023 FORECAST SUPPLY**

**(METHODOLOGY STEPS 1-3)**

**FINDINGS OF FACT**

1. On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”). The Methodology Order established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”). This order applies steps 1, 2, and 3 of the Methodology Order.

**A. Step 1**

2. By April 1 of each year, Step 1 requires members of the SWC to submit to the Department electronic shapefiles delineating the total anticipated irrigated acres for the upcoming year “or confirm in writing that the existing electronic shape file submitted by SWC has not varied by more than five percent.” *Methodology Order* ¶ 1 at 39.

3. On February 6, 2023, the Department received a letter from American Falls Reservoir District #2 (“AFRD2”), stating that its total number of irrigated acres has not varied by more than five percent.

4. On March 2, 2023, Minidoka Irrigation District (“Minidoka”) submitted its electronic shapefile delineating its total irrigated acres to the Department.

5. On March 10, 2023, the Department received a letter from A&B Irrigation District (“A&B”), Burley Irrigation District (“BID”), Milner Irrigation District (“Milner”), North Side Canal Company (“NSCC”) and Twin Falls Canal Company (“TFCC”), stating that their total number of irrigated acres for 2023 will not vary by more than five percent from the electronic shapefiles submitted in prior years.

6. Based on the information submitted by the SWC, the Department will use the following total irrigated acres:

	Total Irrigated Acres <sup>1</sup>	Data Source
A&B	15,924	SRBA Partial Decree
AFRD2	62,361	SRBA Partial Decree
BID	46,035	2013 shapefile submitted by BID, reduced by Department for overlapping acres and acres outside of service area.
Milner	13,264	2010 service area shapefile, reduced by Department for overlapping acres and acres outside of service area.
Minidoka	75,093	SRBA Partial Decree
NSSC	154,067	SRBA Partial Decree
TFCC	194,732	2013 shapefile submitted by TFCC, reduced by Department for overlapping acres and acres outside of service area.

## B. Step 2

7. Step 2 states that, within fourteen days of the issuance of the joint forecast prepared by the United States Bureau of Reclamation and the United States Army Corp of Engineers, the Director “will issue a final order predicting the April [Forecast Supply] for the water year for each SWC entity. The Director will compare the April [Forecast Supply] for each SWC entity to the [Baseline Demand] for each SWC entity to determine if a in-season demand shortfall (“IDS”) is anticipated for the upcoming irrigation season.” *Methodology Order* ¶ 3 at 40.

8. On April 7, 2023, the joint forecast (“Joint Forecast”) was announced, predicting an unregulated inflow 3,700,000 acre-feet at the Snake River near Heise gage for the period of April through July. The forecasted flow volume equates to 112% percent of average.<sup>2</sup> The Joint Forecast “is generally as accurate a forecast as is possible using current data gathering and forecasting techniques.” *Id.* ¶ 49 at 18 (citation omitted).

9. The Heise natural flow data from years 1990–2022 were data inputs for development of regression equations for A&B and Milner to predict the natural flow supply.<sup>3</sup> Data greater or less than two standard deviations from average were excluded from the regression development.

10. The April–July Heise natural flow data from the years 1990–2022 and Box Canyon November–March total discharge data for the period 1989–2022, were data inputs for development of multiple linear regression equations to predict the natural flow supplies for

<sup>1</sup> The number of irrigated acres used in this methodology order is the number of reported acres unless that number is larger than the decreed irrigated acres, and if so, then the decreed acres were used.

<sup>2</sup> The average is based on the years 1991–2020. The Joint Forecast relies on a “30-Year Climate Normal” to calculate an Average April through July runoff volume.

<sup>3</sup> Attached hereto, as Attachment A, are the regression analyses for each SWC entity used to predict natural flow supply.

AFRD2, BID, Minidoka, NSCC, and TFCC. *Methodology Order* ¶ 49 at 18. The U.S. Geological Survey measures and monitors the flow at the Box Canyon stream flow measurement gage. The Box Canyon November–March total discharge used by the Director in the regression models for 2023 totaled 91,898 acre-feet.

11. The storage allocations were predicted for each SWC member. As of April 11, 2023, preliminary water right accounting for the 2023 irrigation year had not been completed. Storage allocations were calculated using an average of actual storage allocations of analogous years. The Surface Water Supply Index (SWSI)<sup>4</sup>, produced by the Natural Resources Conservation Service (NRCS), is calculated by summing reservoir carryover and the forecasted spring and summer streamflow runoff. The April 1 SWSI indicates the water supply in 1993 and 2016 are analogous to the water supply in 2023. Based on the analogous years, the Director anticipates SWC members will receive 95–100% of their allocation. The storage allocations are based on the anticipated allocations minus evaporation charges.

12. Based on the above, the Director projects as follows:

	Predicted Natural Flow Supply	Predicted Storage Allocation	Minidoka Credit Adjustment	Total Supply	BLY 2018	Shortfall
A&B	14,833	135,411		150,244	64,192	0
AFRD2	115,223	387,853	1,000	504,076	453,890	0
BID	109,313	221,713	5,130	336,156	262,211	0
Milner	18,347	88,047		106,393	58,417	0
Minidoka	156,468	342,620	8,370	507,458	354,851	0
NSCC	457,802	819,773	-7,750	1,269,825	1,026,661	0
TFCC	820,663	232,606	-6,750	1,046,519	1,121,717	75,200
Total Projected Demand Shortfall (AF)						75,200

### C. Step 3

13. Step 3 requires the following:

Step 3: By May 1, or within fourteen (14) days from issuance of the final order predicting the April FS, whichever is later in time, junior ground water users with approved mitigation plans for delivery of water must secure, to the satisfaction of the Director, a volume of water equal to their proportionate share of the April IDS unless the April IDS is revised as explained below in paragraph 6. If junior ground water users secured water for a reasonable carryover shortfall to an individual SWC member in the previous year, the current-year mitigation obligation to the

<sup>4</sup> SWSI is a predictive indicator of the surface water available in a basin compared to historic supply. The SWSI is produced monthly by the Natural Resources Conservation Service (NRCS). *See* Nat. Res. Conserv'n Serv., U.S. Dep't of Agric., *Surface Water Supply Index (SWSI)*, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/id/snow/waterproducts/?cid=stelprdb1240689> (last visited Apr. 20, 2022).

individual SWC member will be reduced by the quantity of water secured for the reasonable carryover shortfall. The secured water will not be required to be delivered to the injured members of the SWC until the Time of Need.

*Methodology Order* ¶ 4 at 40.

14. The predicted April DS for TFCC is 75,200 acre-feet. The total predicted DS is 75,200 acre-feet.

15. The Eastern Snake Plain Aquifer Model (“ESPAM”) is used to predict the junior priority water rights that must be curtailed to produce the volume of water equal to the predicted April DS in the near Blackfoot to Minidoka reach. The ESPAM is updated periodically as new field measurements and advancements in modeling technology become available. ESPAM Version 2.2 (“ESPAM2.2”) is the current version. ESPAM2.2 model documentation reports (including a model calibration report, a predictive uncertainty analysis, a superposition model scenario, and a curtailment scenario) were finalized on May 27, 2021. See Idaho Dep’t of Water Res., *ESPAM2.2 Reports* (2021), [https:// research.idwr.idaho.gov/files/projects/espam/browse/ESPAM22\\_Reports/](https://research.idwr.idaho.gov/files/projects/espam/browse/ESPAM22_Reports/).

16. The Department ran ESPAM2.2 to predict the junior priority water rights within the area of common ground water supply that must be curtailed to produce the volume of water equal to the predicted April DS between the May 1 and September 30 of this irrigation season pursuant to the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*. Ground water rights bearing priority dates later than December 30, 1953, must be curtailed to produce the volume of water equal to the predicted April DS in the near Blackfoot to Minidoka reach.

### CONCLUSIONS OF LAW

1. The Fifth Judicial District Court, in and for the County of Minidoka, held that the evidentiary standard of proof to apply in conjunctive administration of hydraulically connected water rights is clear and convincing. See Mem. Decision & Order on Pets. for Jud. Rev., *A&B Irr. Dist., Inc. v. Idaho Dep’t of Water Res.*, No. CV-2009-647 (Minidoka Cnty. Dist. Ct. Idaho May 4, 2010); Mem. Decision & Order on Pets. for Reh’g, *A&B Irr. Dist., Inc. v. Idaho Dep’t of Water Res.*, No. CV-2009-647 (Minidoka Cnty. Dist. Ct. Idaho Nov. 2, 2010).

2. “Clear and convincing evidence refers to a degree of proof greater than a mere preponderance.” *Idaho State Bar v. Topp*, 129 Idaho 414, 416, 925 P.2d 1113, 1115 (1996) (internal quotations removed). “Clear and convincing evidence is generally understood to be ‘[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.’” *State v. Kimball*, 145 Idaho 542, 546, 181 P.3d 468, 472 (2008) (citing *In re Adoption of Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006)); see also *Idaho Dep’t of Health & Welfare v. Doe*, 150 Idaho 36, 41, 244 P.3d 180, 185 (2010).

3. The Director must utilize the best available technology for determining the impact of junior ground water diversions. See *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 814,

252 P.3d 71, 95 (2011). ESPAM 1.1 and 2.1 are the model versions utilized previously in SWC delivery call proceedings. The Director determined that ESPAM 2.1 is the best available scientific tool for predicting the effects of ground water pumping. *See Idaho Ground Water Assoc. v. Idaho Dep't of Water Res.*, 160 Idaho 119, 124, 369 P.3d 897, 902 (2016). ESPAM 2.2 is the latest version of the ESPAM model. The improvements incorporated into ESPAM 2.2, as discussed in Finding of Fact 15, make it the best available scientific tool for predicting the effects of ground water pumping in this proceeding.

4. In 2023, the Director has sufficient information to quantify irrigated areas for each of the SWC members as required by Step 1.

5. The Joint Forecast predicts an unregulated inflow of 3,700,000 acre-feet at the Snake River near Heise gage for the period of April through July. The forecasted flow volume equates to 112% of average.

6. The April predicted DS is 75,200 acre-feet. Junior ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply must mitigate for their proportionate share of the predicted DS in accordance with an approved mitigation plan.<sup>5</sup> Junior ground water users mitigating for their proportionate share of the predicted DS with a secured volume of water pursuant to an approved mitigation plan must, to the satisfaction of the Director, secure their proportionate share for delivery to the injured members of the SWC on or before May 5, 2023. There was a reasonable carryover shortfall of 49,309 acre-feet in the fall of 2022. However, because junior ground water users did not secure any mitigation water for a carryover shortfall, there is no adjustment to the mitigation obligation.

7. If, on or before May 5 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply fail to establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user. Junior ground water users who are mitigating with a secured volume of water are not required to assign the secured volume of water until after the Director issues a subsequent order requiring assignment of the water.

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<sup>5</sup> There are seven approved mitigation plans in place responding to the SWC delivery call filed by: 1) A&B Irrigation District, 2) Southwest Irrigation District and Goose Creek Irrigation District (collectively, "SWID"), 3) the Idaho Ground Water Appropriators, Inc. ("IGWA"), 4) certain cities commonly referred to as the "Coalition of Cities", and 5) certain entities commonly referred to as the "Water Mitigation Coalition." A&B Irrigation District's proportionate share of the predicted DS of 75,200 acre-feet is 458 acre-feet. Due to the nature of the mitigation plans for SWID, the Coalition of Cities and the Water Mitigation Coalition, these entities do not need to establish that they can mitigate for their proportionate share of the predicted DS. IGWA has two approved mitigation plans. If IGWA is in compliance with mitigation plan CM-MP-2016-001, IGWA does not need to establish that it can mitigate for its proportionate share of the predicted DS. If IGWA seeks to provide mitigation by delivery of storage water as approved in mitigation plan CM-MP-2009-007, IGWA's proportionate share of the predicted DS of 75,198 acre-feet is 63,645 acre-feet.

8. If, at any time prior to the Director's final determination of the April Forecast Supply, the Director can determine with certainty that any member of the SWC has diverted more natural flow than predicted, or has accrued more storage than predicted, the Director will revise his initial, predicted DS determination.

**ORDER**

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

The Director predicts an in-season DS of 75,200 acre-feet. On or before May 5, 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan. If a junior ground water user cannot establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.

Dated this 21st day of April 2023.



GARY SPACKMAN

Director



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

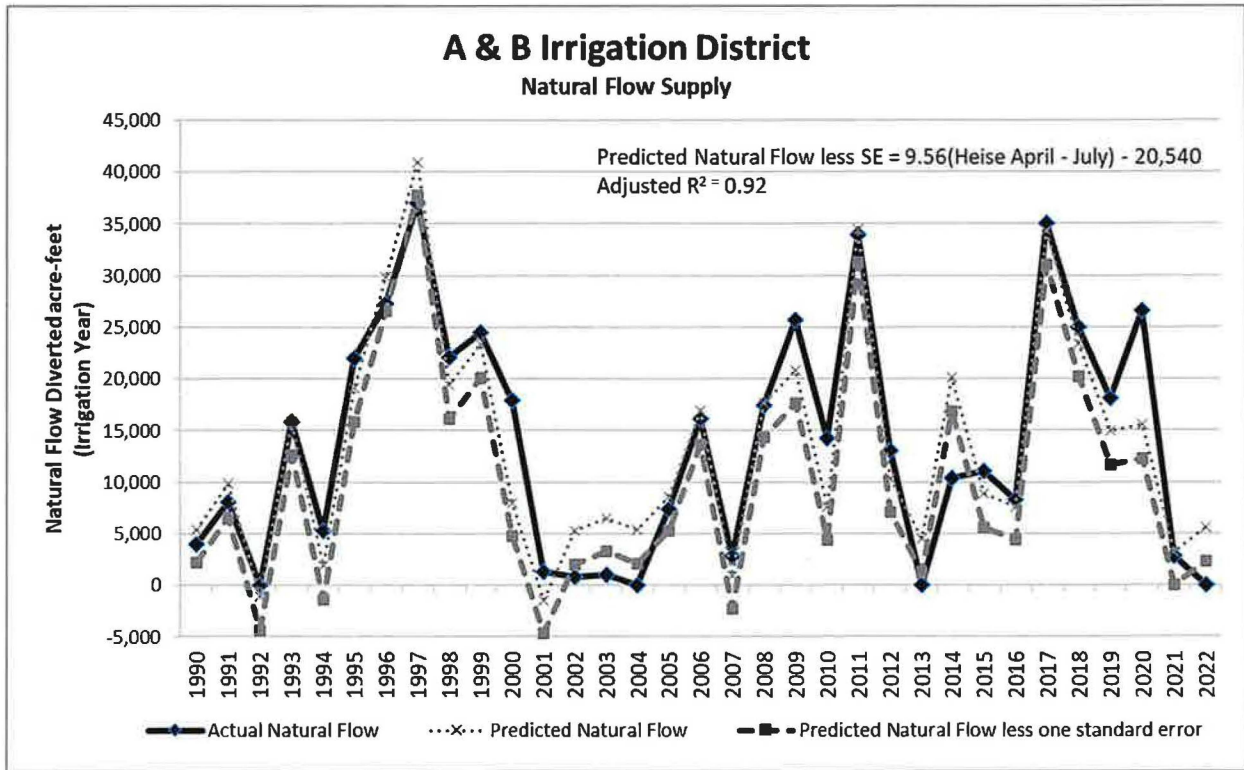
<p>John K. Simpson  MARTEN LAW LLP  P.O. Box 2139  Boise, ID 83701-2139  <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
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<p>Kathleen Marion Carr  US Dept. Interior  960 Broadway Ste 400  Boise, ID 83706  <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert  Natural Resources Section  Environment and Natural Resources Division  U.S. Department of Justice  999 18<sup>th</sup> St., South Terrace, Suite 370  Denver, CO 80202  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard  US Bureau of Reclamation  1150 N Curtis Road  Boise, ID 83706-1234  <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>

<p>Sarah A Klahn Somach Simmons &amp; Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 <a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></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 4<sup>th</sup> Street, Suite 103 Boise, ID 83702 <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert E. Williams WILLIAMS, MESERVY, &amp; LOTH SPEICH, LLP P.O. Box 168 Jerome, ID 83338 <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></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 <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a> <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a> <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>	<p><input checked="" type="checkbox"/> Email</p>

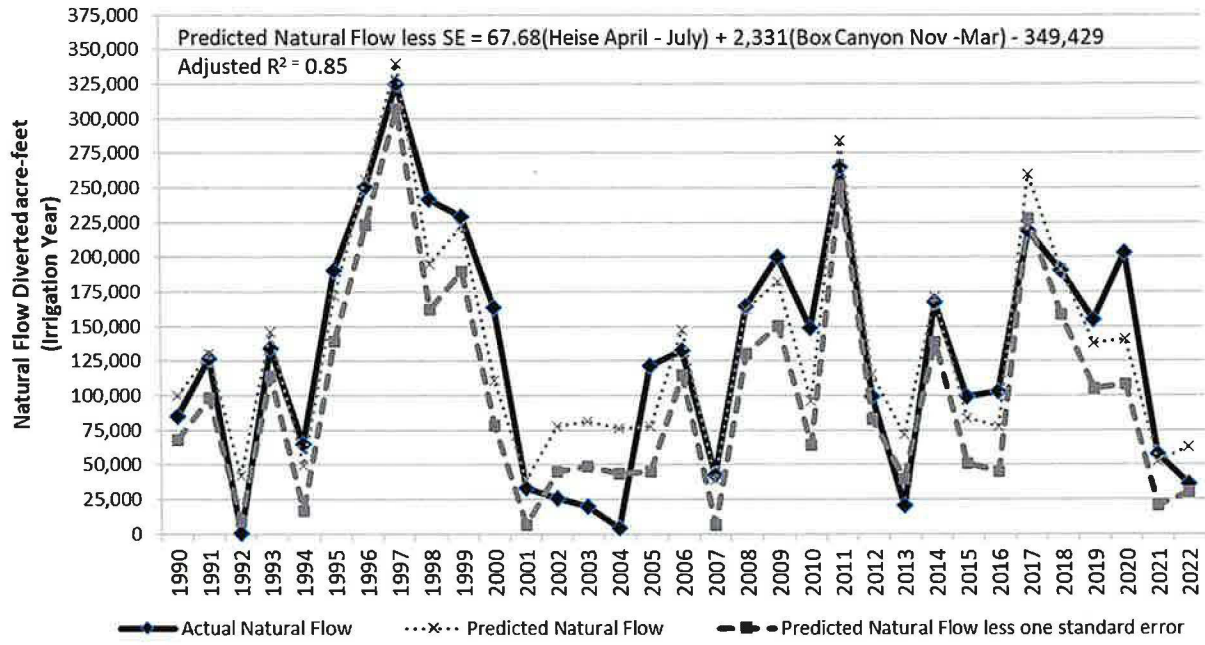
<p>Corey Skinner  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p>	<input checked="" type="checkbox"/> Email
<p><b>COURTESY COPY TO:</b>  William A. Parsons  PARSONS SMITH &amp; STONE  P.O. Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<input checked="" type="checkbox"/> Email

  
Megan Jenkins  
Administrative Assistant II

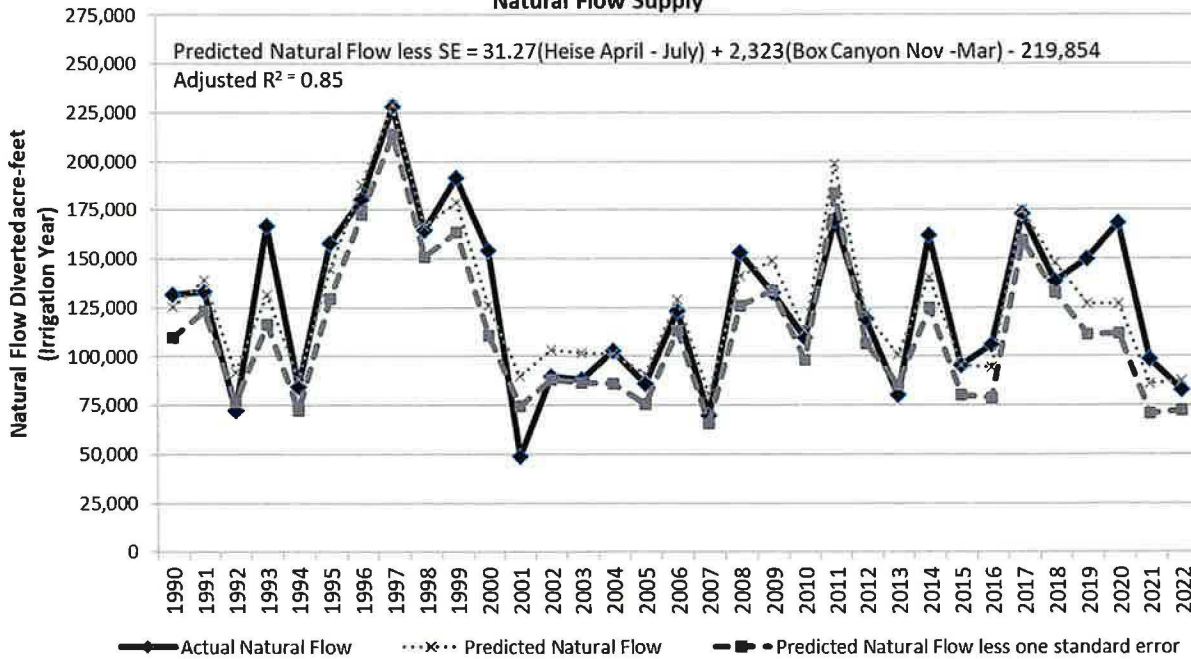
# ATTACHMENT A



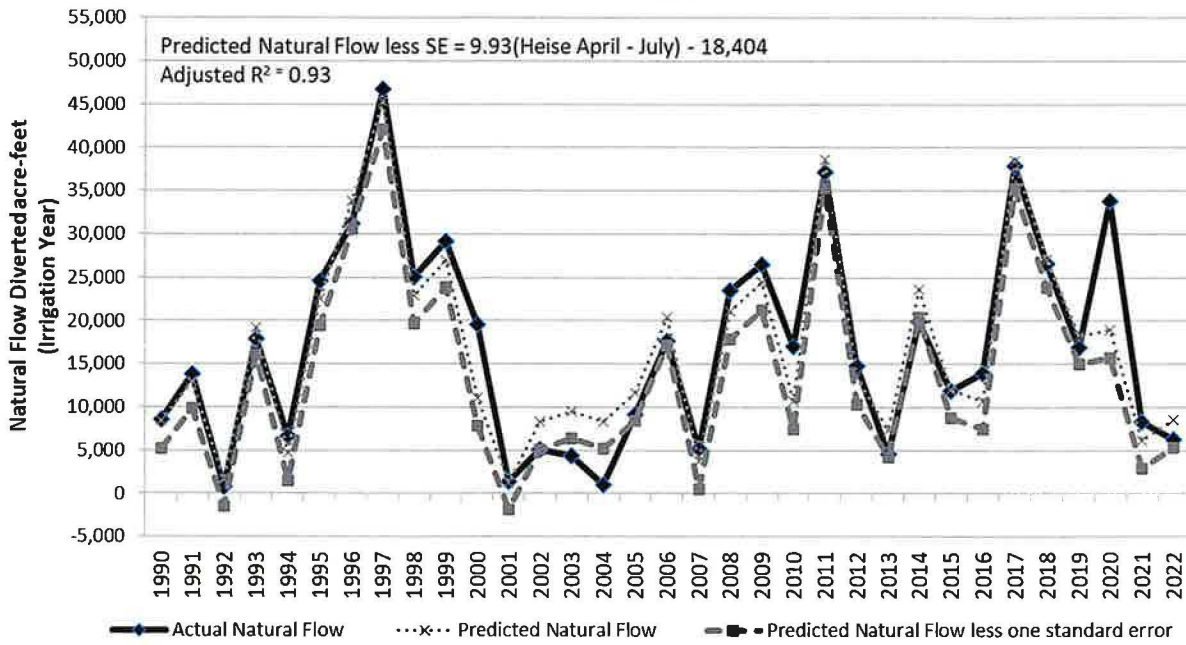
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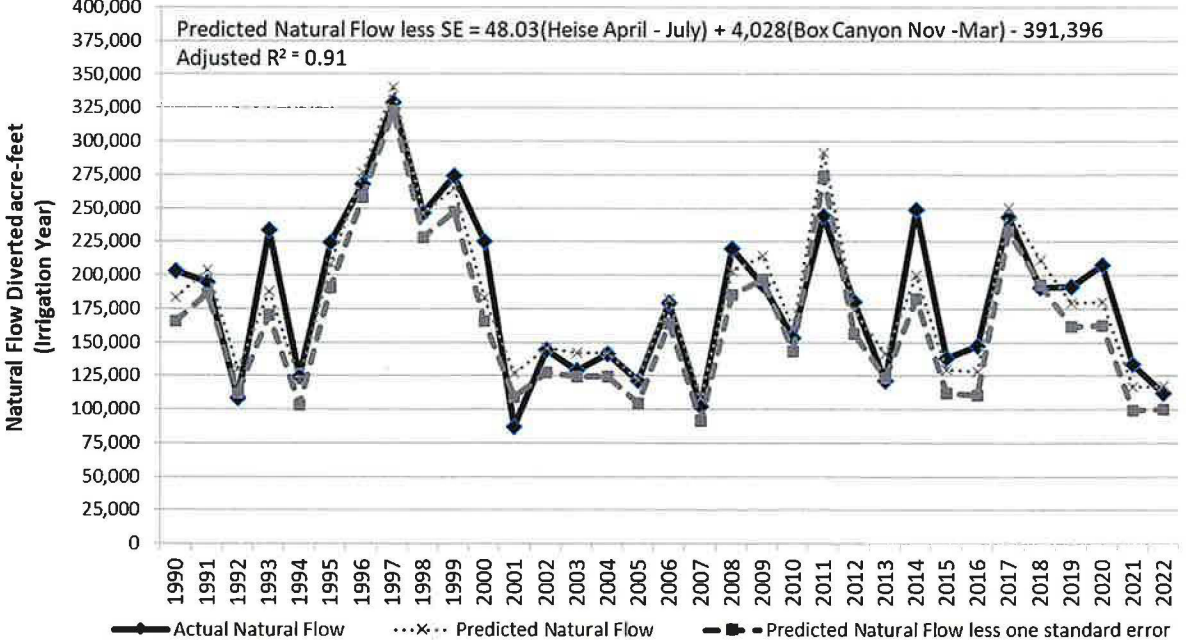
### Burley Irrigation District Natural Flow Supply

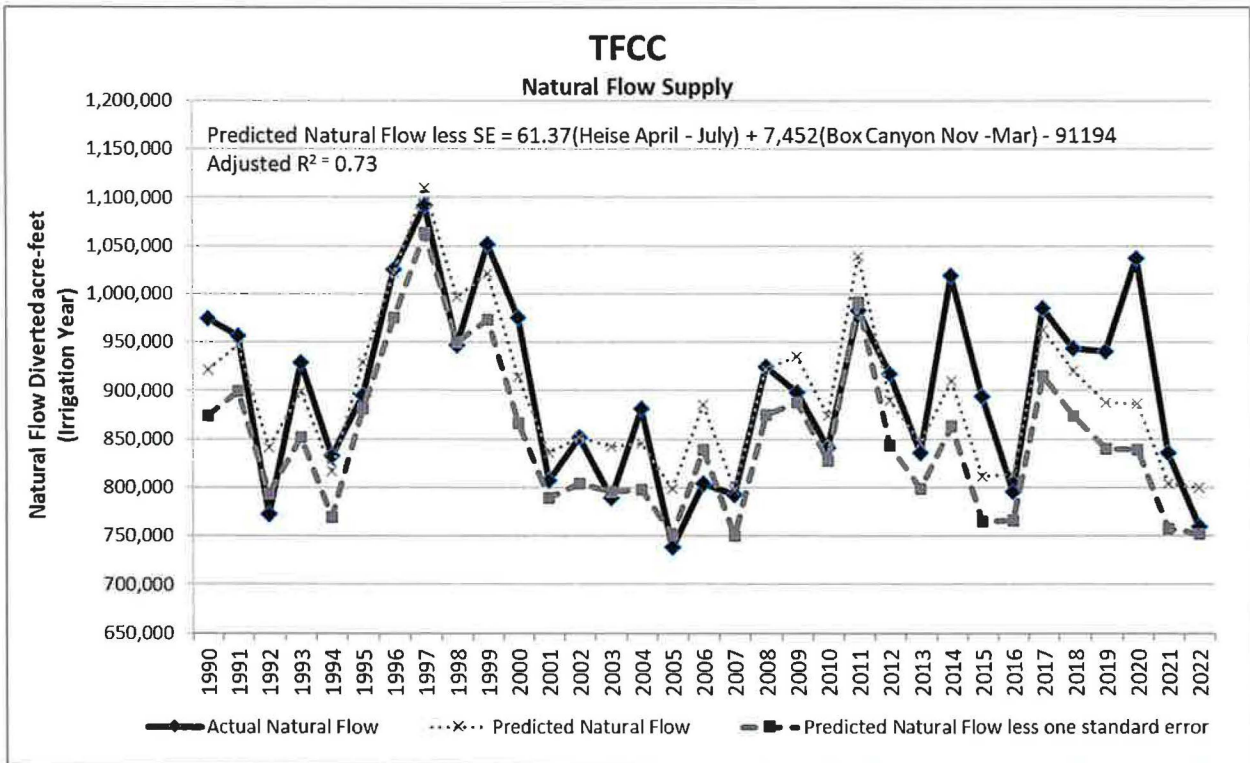
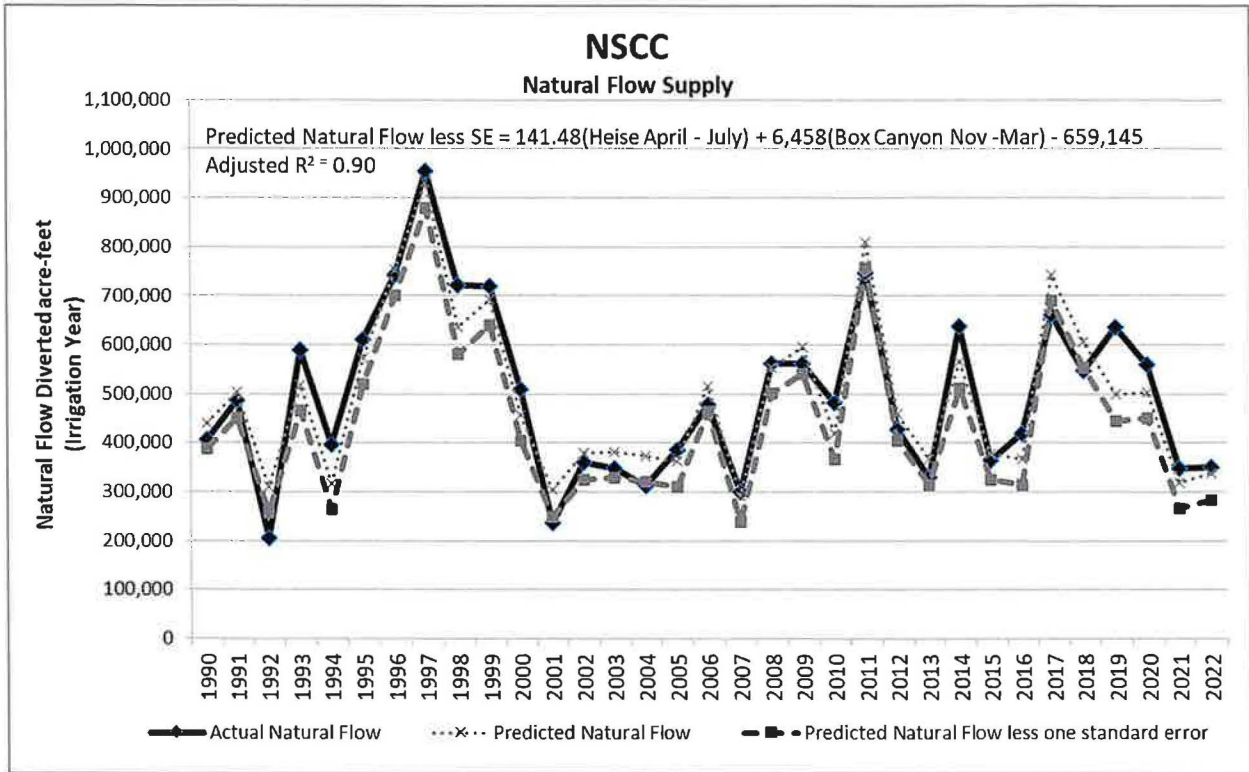


### Milner Irrigation District Natural Flow Supply



### Minidoka Irrigation District Natural Flow Supply





## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.



**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-DC-2010-001

**NOTICE OF HEARING, NOTICE  
OF PREHEARING CONFERENCE,  
AND ORDER AUTHORIZING  
DISCOVERY**

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) as well as his *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”). The Methodology Order revises the nine steps used to determine material injury to members of the Surface Water Coalition (“SWC”). The As-Applied Order predicts a shortfall for the 2023 irrigation season, which will result in mitigation requirements or curtailment for ground water rights with priority dates junior to December 30, 1953.

The Director anticipates that one or more parties will request a hearing pursuant to Idaho Code § 42-1701A(3) in response to one or both of the orders. Normally, a party has 15 days to request a hearing. However, time is of the essence because the irrigation season has commenced for many water users. Idaho's Constitutional Convention intended that there be no unnecessary delays in the delivery of water pursuant to a valid water right. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 874, 154 P.3d 433, 445 (2007). “Clearly, a timely response is required when a delivery call is made and water is necessary to respond to that call.” *Id.* Accordingly, the Director, consistent with the obligation to timely administer water rights, will take the proactive step of setting the matter for hearing, will set a prehearing conference, and will authorize discovery. Should the parties mutually agree that a hearing is unwarranted, the parties may file a stipulated motion to vacate.

**NOTICE OF HEARING**

**NOTICE IS HEREBY GIVEN** that the Department will hold a hearing on the Methodology Order and As-Applied Order on **June 6–10, 2023. The hearing will begin on June 6 at 9:00 a.m. (MST).** Subsequent starting and ending times will be scheduled during the hearing. The last day of the hearing, June 10, is a Saturday. The day is reserved if needed to complete the hearing.

The hearing will take place at the Department’s State Office, located at **322 E. Front Street, 6th Floor, Conference Rooms 602A–D, Boise, Idaho.**

All parties wishing to participate in the hearing shall be present in person. Remote participation will be allowed for those who wish to observe the hearing. To request remote participation information, contact Sarah Tschohl at the phone number or email listed below.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, as well as 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 prior to the hearing. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815, email [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov).

### NOTICE OF PREHEARING CONFERENCE

**NOTICE IS HEREBY GIVEN** that the Department will hold a prehearing conference on the Methodology Order and As-Applied Order on **April 28, 2023, at 1:30 p.m. (MST)**. The conference 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 prehearing conference must appear in person or by video conferencing. The parties shall come prepared to identify the issues to be addressed at the hearing.

To attend the conference via computer or smartphone, please click the following Webex link, follow the prompts, and wait to be admitted by the meeting host:  
<https://idahogov.webex.com/idahogov/j.php?MTID=mb39d4fed7de1bfefe8462aaefafd3dbb>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2450 253 0090.

The prehearing 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 conference 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 conference, please advise the Department no later than one (1) day before the conference. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815, email [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov).

## ORDER AUTHORIZING DISCOVERY

**IT IS HEREBY ORDERED** that the parties are authorized to immediately conduct and engage in discovery pursuant to IDAPA 37.01.01.521.

**IT IS FURTHER ORDERED** that, pursuant to IDAPA 37.01.01.053, documents filed in this proceeding may be served on the parties and the Department via email. Service on the Department shall be made by email to [file@idwr.idaho.gov](mailto:file@idwr.idaho.gov). Service on the parties shall be made by email to the email addresses listed in the Certificate of Service below.

Dated this 21st day of April 2023.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 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  <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Travis L. Thompson  MARTEN LAW LLP  P.O. Box 63  Twin Falls, ID 83303-0063  <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a>  <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>W. Kent Fletcher  FLETCHER LAW OFFICE  P.O. Box 248  Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Thomas J. Budge  Elisheva M. Patterson  RACINE OLSON  P.O. Box 1391  Pocatello, ID 83204-1391  <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>  <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Kathleen Marion Carr  US Dept. Interior  960 Broadway Ste 400  Boise, ID 83706  <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<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  <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
<p>Matt Howard  US Bureau of Reclamation  1150 N Curtis Road  Boise, ID 83706-1234  <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email

<p>Sarah A Klahn Somach Simmons &amp; Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205 <a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></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 <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert E. Williams WILLIAMS, MESERVY, &amp; LOTHSPEICH, LLP P.O. Box 168 Jerome, ID 83338 <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN &amp; CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></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 <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a> <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a> <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Tony Olenichak IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>	<p><input checked="" type="checkbox"/> Email</p>

Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a>	<input checked="" type="checkbox"/> Email
COURTESY COPY TO: William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>	<input checked="" type="checkbox"/> Email

  
\_\_\_\_\_  
Sarah Tschohl  
Paralegal

RECEIVED

Apr 28, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-4**

Candice M. McHugh, ISB # 5908  
Chris M. Bromley, ISB # 6530  
MCHUGH BROMLEY, PLLC  
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[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)

*Attorneys for the Cities of Bliss, Burley,  
Carey, Declo, Dietrich, Gooding, Hazelton,  
Heyburn, Jerome, Paul, Richfield, Rupert,  
Shoshone, and Wendell*

**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-DC-2010-001**

**COALITION OF CITIES' REQUEST  
FOR HEARING**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell ("Coalition of Cities"), by and through their attorneys of record, McHugh Bromley, PLLC and files this Request for Hearing in the above captioned matter.

## REQUEST FOR HEARING

Pursuant to Idaho Code § 42-1701(A)(3), the Coalition of Cities requests a hearing on the Department's *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover*, issued April 14, 2023. Among the issues the Coalition of Cities has identified for hearing:

- a) IDWR's new reliance on transient modeling;
- b) IDWR's failure to properly identify the Surface Water Coalition's ("SWC") irrigated acreage used in the determination of reasonable in-season demand;
- c) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;
- d) IDWR's failure to consider changes in the efficiency of the SWC's operations;
- e) IDWR's failure to consider all sources of supply available to the SWC;
- f) IDWR's use of 2018 as the new baseline year;
- g) IDWR's failure to apply Conjunctive Management Rule 20.03 and principles of reasonableness generally; and
- h) IDWR's violation of due process rights of all interested water users by:
  - i) by engaging in an apparently sham public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order and then largely ignoring that group's recommendations; and
  - ii) by a continued abuse of process, authority and power in setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants and reflecting bias against junior water right uses.



Submitted this 28<sup>th</sup> day of April, 2023

**MCHUGH BROMLEY, PLLC**

/s/ Candice M. McHugh  
Candice M. McHugh  
*Attorney for Coalition of Cities*

/s/ Chris M. Bromley  
Chris M. Bromley  
*Attorney for Coalition of Cities*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of April, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

Idaho Dept. of Water Res.

[file@idwr.idaho.gov](mailto:file@idwr.idaho.gov)

Kathleen Marion Carr

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David W. Gehlert

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*Attorneys for City of Pocatello*

**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-DC-2010-001

**MOTION FOR APPOINTMENT OF  
INDEPENDENT HEARING  
OFFICER**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”), by and through their attorneys of record, Candice M. McHugh and Chris M. Bromley, the City of Idaho Falls, by and through its attorney of record, Robert L. Harris, and the City of Pocatello by and through its attorney of record Sarah A. Klahn (collectively the “Cities”),

pursuant to I.C. § 42-1701A(2) and IDAPA 37.01.01.410, and hereby moves the Director to appoint an independent hearing officer.

On April 21, 2023, the Director issued a series of orders regarding the Surface Water Coalition (“SWC”) delivery call: *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”); *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”); and *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“Hearing Order”).

The *Methodology Order* is a detailed, technical order, stating it is using the “best available science” to revise the Director’s predictive tools for determining material injury to the SWC pursuant to the CM Rules. A material change in this *Methodology Order* from all prior decisions of the Director in the SWC delivery call is his decision to use the Eastern Snake Plain Aquifer Model (“ESPAM”) in transient as opposed to steady-state. *See Methodology Order* at 35, ¶ 19. The significance of this policy change cannot be overstated, is unprecedented, and not understood.

The *As-Applied Order* uses the information from the *Methodology Order* and applies it to the first half of the 2023 irrigation season, to compute a “Demand Shortfall” of 75,200 acre-feet to Twin Falls Canal Company for the period April – July. Using a transient modeling run, ESPAM predicts that ground water rights that are junior to December 30, 1953 will need to be curtailed to satisfy the predicted injury. The predicted shortfall to TFCC in a year when the Upper Snake Reservoir systems is expected to fill and with the mountains of eastern Idaho currently containing more than 100% snow water equivalent, *see*

the *Motion for Continuance* filed contemporaneously by the Cities, results in an unprecedented quantification of material injury that defies logic.

Associated with the *As-Applied Order* is a link with files containing *April Background Information*. The *April Background Information* contains: historical diversion data for the SWC members; historical Heise flow data; analyses to estimate the 2023 shortages to the SWC members; transient ground water modeling files and results; irrigated area shape files for Minidoka Irrigation District.

The *Hearing Order* authorizes discovery, establishes that a prehearing conference will take place on April 28, 2023, and that the hearing in the contested case will commence on June 6, 2023. The *Hearing Order* does not specify if the Director will serve as the hearing officer.

Idaho Code § 42-1701A(2) provides that, “The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director.” IDAPA 37.01.01.410 allows for the appointment of a hearing officer who may be an “employee[] of the agency or [an] independent contractor[.]”

If the Director elects to serve as the Hearing Officer, the Cities respectfully move him to appoint an independent hearing officer for the following reasons:

1. Since the 2005 delivery call was filed by the Surface Water Coalition (“SWC”), the only evidentiary hearing of any magnitude occurred in 2008, when former Chief Justice Gerald F. Schroeder served as the independent hearing officer and issued his April 29, 2008 Recommended Order. *A&B Irr. Dist. v. Spackman*, 155 Idaho 640, 645, 315 P.3d 828, 833 (2013). Former Chief Justice Schroeder’s

Recommended Order lead former Director David R. Tuthill, Jr. to issue the first *Methodology Order* on April 7, 2010. *Id.* at 647, 315 P.3d 835. The first *Methodology Order* and orders implementing the same were addressed by the Court in its 2013 decision in *A&B v. Spackman*.

2. Since then, Director Spackman has issued updates to the *Methodology Order*, with the methodology now in its fifth iteration.
3. The *Methodology Order* that was issued on April 21, 2023, represents a sea-change in the use of predictive tools, updated data, and use of the Eastern Snake Plain Aquifer Model in a transient function, as opposed to steady-state, to quantify material injury and choose a priority date for curtailment. Despite this, the *Methodology Order* fails to update data as to SWC irrigation efficiencies, irrigation practices, irrigated area, among other topics that will need to be addressed at an evidentiary hearing with a fully developed record.
4. Former Chief Justice Schroeder was named as the hearing officer in response to the SWC's *Request for Independent Hearing Officer; Disqualification of the Director as a Matter of Right* (June 4, 2007).<sup>1</sup> When former Chief Justice Schroeder was named as the hearing officer, former Director Tuthill issued an order not only appointing former Chief Justice Schroeder to serve, but he also stating that he would continue to administer water rights in response to the SWC delivery call: "The Director maintains jurisdiction over the ongoing administration of water rights related to this matter." *Order Appointing Hearing*

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<sup>1</sup> SWC Request for Independent Hearing Officer; Disqualification of the Director as the Hearing Officer as a Matter of Right | June 4, 2007 | SWC (idaho.gov).

*Officer* (Aug. 1, 2007) (emphasis added).<sup>2</sup>

5. What was decided in 2007 holds true today. The Director has the tools by which to administer junior-priority ground water rights for the benefit of the SWC, with mitigation plans in place to protect most ground water users from curtailment while the hearing process plays out.
6. It has been eighteen years since the original SWC delivery call. It has been fifteen years since the evidentiary hearing before former Chief Justice Schroeder, meaning it has been fifteen years since an evidentiary hearing of any consequence has taken place. In those intervening fifteen years, many irrigation practices have likely changed, all of which deserve a hearing, based on a fully developed record, to be heard by an independent hearing officer for consideration by the Director.

Based on the foregoing, IDWR’s practice is to appoint an independent hearing officer to preside over evidentiary hearings in the SWC delivery call. Cities agree with past practice respectfully move the Director to appoint an independent hearing officer.

Respectfully submitted this 28<sup>th</sup> day of April, 2023.

/s/ Robert L. Harris  
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*Attorneys for City of Idaho Falls*

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*Attorneys for Coalition of Cities*

/s/ Chris M. Bromley  
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MCHUGH BROMLEY  
*Attorneys for Coalition of Cities*

/s/ Sarah A. Klahn  
Sarah A. Klahn  
SOMACH SIMMONS & DUNN  
*Attorneys for City of Pocatello*

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<sup>2</sup> Order Appointing Hearing Officer | August 1, 2007 | SWC (idaho.gov).



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of April, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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**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-DC-2010-001**

**MOTION FOR CONTINUANCE**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”), by and through their attorneys of record, Candice M. McHugh and Chris M. Bromley, the City of Idaho Falls, by and through its attorney of record, Robert L. Harris, and the City of Pocatello, by and through its attorney of record, Sarah A. Klahn (collectively the “Cities”),

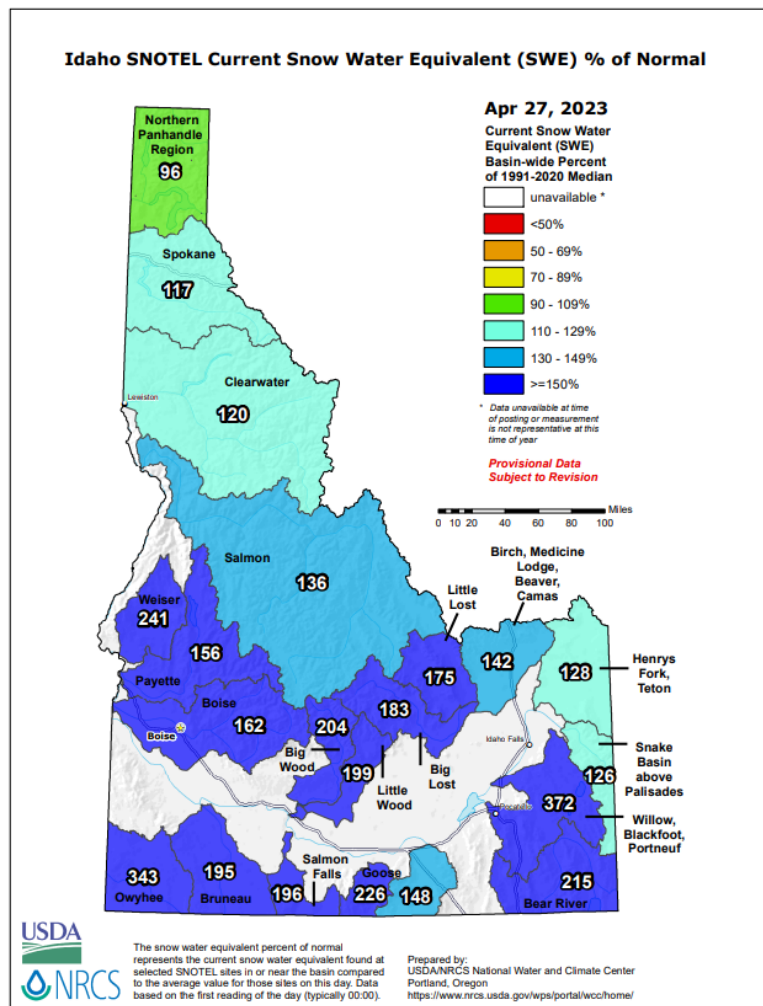
pursuant to IDAPA 37.01.01.220 and IDAPA 37.01.01.560, and hereby move for continuance of the hearing scheduled for June 6-10, 2023, in the above-captioned matter.

On April 21, 2023, the Director issued a series of orders regarding the Surface Water Coalition (“SWC”) delivery call: *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”); *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”); and *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“Hearing Order”). While the Cities are in full compliance with their approved mitigation plan, the Cities nevertheless remain subject to the *Methodology Order* and its significant analytical departure from the Fourth Methodology Order.

The *Methodology Order* is a detailed, technical order, stating it is using the “best available science” to revise the Director’s predictive tools for determining material injury to the SWC pursuant to the CM Rules. The Director decided in this *Methodology Order* to make a material departure from all prior decisions in the SWC delivery call to use the Eastern Snake Plain Aquifer Model (“ESPAM”) in transient as opposed to steady-state to predict the priority date for curtailment needed to satisfy that injury. *See Methodology Order* at 35, ¶ 19. The significance of this policy change cannot be overstated and is unprecedented.

The *As-Applied Order* uses the information from the *Methodology Order* and applies it to the first half of the 2023 irrigation season, to compute a “Demand Shortfall” of 75,200 acre-feet to Twin Falls Canal Company (“TFCC”) for the period April – July. Using a transient modeling run, ESPAM predicts that ground water rights that are junior to

December 30, 1953 will need to be curtailed to satisfy the predicted injury. The predicted shortfall to TFCC in a year when the Upper Snake Reservoir systems is expected to fill and with the mountains of eastern Idaho currently containing more than 100% snow water equivalent, which is shown on the following page, results in an unprecedented quantification of material injury that defies logic:



[https://www.wcc.nrcs.usda.gov/ftpref/data/water/wcs/gis/maps/id\\_swepctnormal\\_update.pdf](https://www.wcc.nrcs.usda.gov/ftpref/data/water/wcs/gis/maps/id_swepctnormal_update.pdf)

Associated with the *As-Applied Order* is a link with files containing *April Background Information*. The *April Background Information* contains: historical diversion data for the SWC members; historical Heise flow data; analyses to estimate the 2023

shortages to the SWC members; transient ground water modeling files and results; irrigated area shape files for Minidoka Irrigation District.

The *Hearing Order* authorizes discovery, establishes that a prehearing conference will take place on April 28, 2023, and that the hearing in the contested case will commence on June 6, 2023.

IDAPA 560 states: “The presiding officer may continue proceedings for further hearing.” The Cities request that the hearing be continued until December 2023 or January 2024 for the following reasons:

1. The need for completion of adequate discovery by the parties. The Idaho Rules of Civil Procedure allows thirty (30) days for a party to respond to written discovery. If discovery is served on or after the prehearing conference, which is scheduled for April 28, 2023, answers would not be due until at least May 30, 2023, which is seven (7) days before the hearing is scheduled to commence. Additionally, compounding the already compressed schedule is the fact that Memorial Day is May 29, 2023. It is customary to have responses to written discovery before noticing depositions. Since written responses to discovery will not be available until after Memorial Day, it is simply not possible to have depositions before the June 6, 2023 hearing date.
2. The need for completion of expert reports and rebuttal reports. In order to properly formulate expert opinions and reports, the Cities require discovery from the parties as well as information from IDWR. Without discovery and information from IDWR, and based on what is understood now, issues that may be raised as expert opinions in expert reports include but are not limited to the following:
  - a) IDWR’s new reliance on transient modeling.
  - b) IDWR’s reliance on new data. IDWR has added seven (7) years of additional, voluminous hydrologic and water use data to the datasets used in the *Methodology Order* and *As-Applied Order*. There is insufficient time available to properly review and vet these data and how they were used in the revised calculations;
  - c) IDWR’s failure to properly identify the SWC’s irrigated acreage used in the determination of reasonable in-season demand;
  - d) IDWR’s failure to consider TFCC’s increase in diversions over the last twenty

years;

- e) IDWR's failure to consider changes in the efficiency of SWC operations;
  - f) IDWR's failure to apply CM Rule 20.03 and principles of reasonableness generally; and
  - g) IDWR's violation of due process rights of all interested water users:
    - i. By engaging in an apparently sham public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order; and
    - ii. By setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives, and consultants.
3. The allotted schedule leaves no time for necessary site investigations, let alone the ability for expert and lay witnesses to be deposed as to their opinions when it comes to water use and current practices. The original delivery call was filed eighteen (18) years ago in 2005 with various proceedings and an administrative hearing occurring in 2008. Water use, irrigation practices, and irrigated area have likely materially changed in the intervening fifteen (15) years since the hearing. If IDWR is using the "best available science" to administer junior-priority water rights, juniors, who have due process rights in delivery calls, must be afforded the same opportunity to use the best available science to evaluate the SWC's current water use.
  4. Evaluation of the factual and legal issues that the Director has addressed in the *Methodology Order* and *As-Applied Order* will be complex and require significantly more time from the Cities' attorneys, consultants, and expert witnesses than has been allotted.
  5. In prior delivery call hearings, the Director has asked for preparation of staff memoranda. If staff memoranda are prepared, those documents will need to be evaluated in an already compressed time period. With the likelihood that parties will request interviews or depositions of the authors of the staff memoranda and the likely need for expert rebuttal reports to the memoranda and to the expert reports of other parties, the time provided is grossly inadequate.
  6. The need for the Director to resolve the Cities' *Motion to Appoint an Independent Hearing Officer*.
  7. The Coalition of Cities' attorney, Candice M. McHugh, is unavailable during the dates set for hearing because of a previously scheduled out of state obligation, leaving the Coalition of Cities' other attorney, Chris M. Bromley, as the sole attorney representing

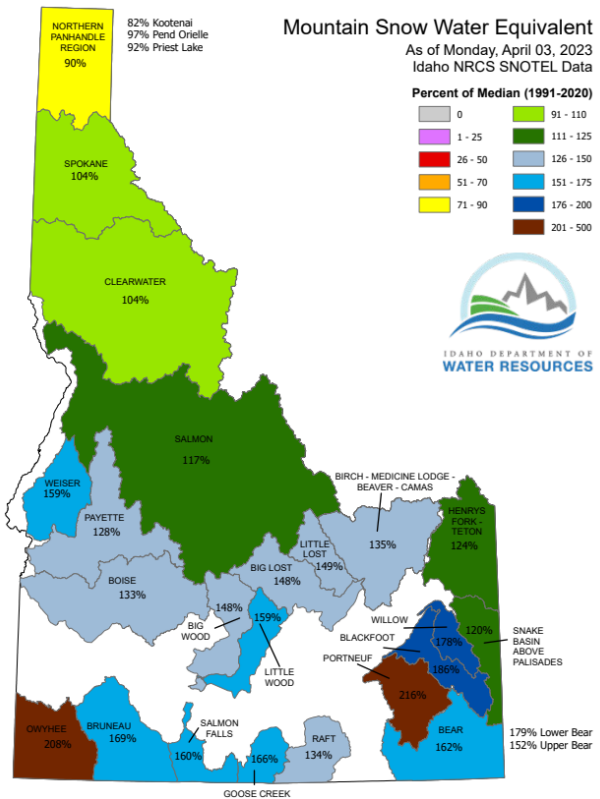
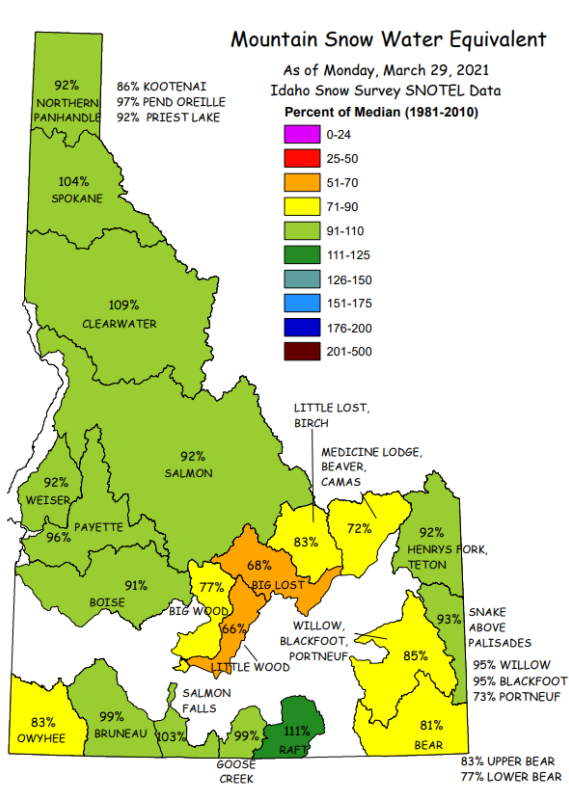
the client and running the office.

8. Mr. Bromley, as well as other counsel who represent parties in this matter, is set to argue before the Idaho Supreme Court on June 5, 2023 in the Department's appeal of the 2021 curtailment in Basin 37, *South Valley Ground Water Dist. v. Idaho Dept. of Water Res.*, Docket No. 49632. Mr. Bromley has a duty to another client in the appeal that will require his full attention in the week leading up to the argument and will be unable to provide the focus that is required to adequately represent the Coalition of Cities with Ms. McHugh's absence. Additionally, Mr. Bromley is scheduled to be out of the country on a previously planned trip with his family for most of the month of July.
9. Greg Sullivan, expert consultant for the Cities, is scheduled to be out of the country from May 17, 2023 through June 3, 2023 and will be unavailable to consult with the Cities' attorneys to assist in developing strategy, prepare expert reports, prepare exhibits, and to attend depositions if the schedule even allows for depositions to occur.

Based on the foregoing, the abbreviated hearing schedule leaves no time for discovery, fact finding, and the ability for the Cities' attorneys and experts to adequately represent their clients' interests.

A continuance is further warranted because, unlike in the Basin 37 delivery call that is referenced above, a "drought is [not] predicted for the 202[3] irrigation season . . . ." *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* at 1 (May 4, 2021). Indeed, "The Joint Forecast predicts an unregulated inflow of 3,700,000 acre-feet at the Snake River near Heise gage for the period of April through July. The forecasted flow volume equates to 112% of average." *As-Applied Order* at 5. The water supply in eastern Idaho is self-evident when looking at IDWR's snow water equivalency map for the spring of 2021 that was used to predict the drought in Basin 37 and comparing it with the same map for the spring of 2023, as shown on the follow page:





<https://idwr.idaho.gov/water-data/water-supply/snow-water-equivalency/>

In the Basin 37 delivery call, the Director stated he had to act with exigency because of a historically poor water supply and because he lacked a framework for determining material injury to senior-priority surface water rights. Here, material injury has already been determined in the current *Methodology Order* and those that preceded it, allowing the Director to administer water rights. Additionally, many of the junior-priority ground water users who pump from the Eastern Snake Plain Aquifer (“ESPA”) are allowed to do so based on previously approved CM Rule 43 mitigation plans. On April 24, 2023, the Director issued an order in the companion matter, CM-MP-2016-001, related to IGWA’s obligations for 2023; these obligations are also referenced in footnote 5 of the Final Order Regarding April 2023 Forecast Supply Methodology Steps 1-3. The ESPA Cities, of which the Cities are part, is one group that is allowed to pump in the 2023 irrigation season because they are in compliance with their mitigation plan. *As-Applied Order* at 5, fn. 5. Therefore, the

Director has all of the tools at his disposal to administer junior-priority ground water rights for the benefit of senior-priority surface water rights, with mitigation plans in place to address material injury, and no exigency to warrant a complex, technical hearing in such a compressed schedule.

As explained by the Supreme Court, expediency in conjunctive administration is important, however, “It is vastly more important that the Director have the necessary pertinent information and the time to make a reasoned decision based on the available facts.” *American Falls Res. Dist. No. 2 v. Idaho Dept. of Water Res.*, 143 Idaho 862, 875, 154 P.3d 433, 446 (2007) (emphasis added). Because there is no exigency, the schedule that the Director established does not allow time for the parties to present their information for consideration. Therefore, the Cities move to continue the hearing until a date in December 2023 or January 2024, which respects the schedules of the parties and will allow the Director sufficient time to evaluate the evidence and issue an order prior to the 2024 irrigation season.

Respectfully submitted this 28<sup>th</sup> day of April, 2023.

/s/ Robert L. Harris  
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**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-DC-2010-001  
MCCAIN FOODS USA, INC.'S  
REQUEST FOR HEARING AND  
OBJECTION**

**REQUEST FOR HEARING**

Pursuant to Idaho Code § 42-1701(A)(3), McCain Foods USA, Inc.'s ("McCain") requests a hearing on the Department's *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover and Final Order Regarding April 2023 Forecast Supply* ("2023 As-Applied Order") both issued April 21, 2023. McCain objects to the *Fifth Amended Order* and the 2023 As-Applied Order's implementation this upcoming season for the reasons set forth below

which it also identifies as issues for hearing. McCain reserves the right to revise the issues as more information becomes available.

Among the issues the McCain has identified for hearing are:

- a) IDWR's new reliance on transient modeling;
- b) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;
- d) IDWR's failure to consider changes in the efficiency of the SWC's operations;
- e) IDWR's failure to consider all sources of supply available to the SWC;
- f) IDWR's use of 2018 as the new baseline year; and
- g) IDWR's violation of McCain's due process rights by giving less than 10 business days to provide a mitigation solution after a wholesale change in methodology and in a non-drought year, by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

Submitted this 28<sup>th</sup> day of April, 2023

**MCHUGH BROMLEY, PLLC**

/s/ Candice M. McHugh

Candice M. McHugh

*Attorney for McCain*

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**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-DC-2010-001**

**COALITION OF CITIES' AMENDED  
REQUEST FOR HEARING**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell ("Coalition of Cities"), by and through their attorneys of record, McHugh Bromley, PLLC and files this Request for Hearing in the above captioned matter.

## REQUEST FOR HEARING

Pursuant to Idaho Code § 42-1701(A)(3), the Coalition of Cities requests a hearing on the Department's *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover*, and *Final Order Regarding April 2023 Forecast Supply* ("2023 As-Applied Order") both issued April 21, 2023. Among the issues the Coalition of Cities has identified for hearing:

- a) IDWR's new reliance on transient modeling;
- b) IDWR's failure to properly identify the Surface Water Coalition's ("SWC") irrigated acreage used in the determination of reasonable in-season demand;
- c) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;
- d) IDWR's failure to consider changes in the efficiency of the SWC's operations;
- e) IDWR's failure to consider all sources of supply available to the SWC;
- f) IDWR's use of 2018 as the new baseline year;
- g) IDWR's failure to apply Conjunctive Management Rule 20.03 and principles of reasonableness generally; and
- h) IDWR's violation of due process rights of all interested water users by:
  - i) by engaging in an apparently sham public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order and then largely ignoring that group's recommendations; and
  - ii) by a continued abuse of process, authority and power in setting the hearing without regard to the time required for discovery and without consideration of the existing

obligations of the parties, their legal representatives and consultants and reflecting bias against junior water right uses.

Submitted this 28<sup>th</sup> day of April, 2023

**MCHUGH BROMLEY, PLLC**

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Candice M. McHugh  
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**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-DC-2010-001**

**POCATELLO'S REQUEST FOR  
HEARING**

COMES NOW the City of Pocatello (Pocatello), by and through its attorneys of record, Somach Simmons & Dunn, to request a hearing in the captioned matter and to seek an order authorizing discovery. As reflected in the contemporaneously filed Motion for Continuance, Pocatello joins in the request to delay the trial in this matter currently set for June 2-6, 2023.

**A. Request for Hearing**

Pursuant to Idaho Code § 42-1701(A)(3), Pocatello requests a hearing on the Department's *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover*, issued

April 21, 2023 (“Fifth Methodology Order”). Among the issues Pocatello has identified for hearing:

- a) Whether changes to how IDWR computes curtailment dates (using transient groundwater modeling) are reasonable;
- b) Whether the ESPAM has been shown to be sufficiently accurate to support the proposed transient groundwater modeling to determine curtailment dates;
- c) Whether the Surface Water Coalition’s (“SWC”) actual irrigated acreage was properly determined for use in determining reasonable in-season demand;
- d) Whether a baseline demand that incorporates increases in SWC member diversions in recent years is valid basis for conjunctive administration;
- e) The reasonableness of Project efficiencies of the SWC members, trends in said efficiencies in recent years, and how the efficiency values are used in determining reasonable in-season demands;
- f) IDWR’s failure to consider all sources of supply to the SWC;
- g) Whether 2018 is a reasonable new baseline year;
- h) Whether changes to determination of the reasonable in-season demand for the SWC members are reasonable and appropriate;
- i) Whether the level of conservatism employed in the methodology order is reasonable;

- j) Whether contingencies other than curtailment are available to protect senior-priority rights in the event that mitigation water becomes unavailable.
- k) Whether changes to how the reasonable carryover for the SWC members is computed are reasonable;
- l) Whether other analytical methods or modeling would reasonably improve the process for predicting and evaluating material injury;
- m) IDWR’s failure to apply Conjunctive Management Rule 20.03 (IDAPA 37.03.11.20.03) and principles of reasonableness generally;
- n) IDWR’s violation of due process rights of all interested water users:
  - i. by engaging in an ineffective public process related to the Department’s convening of the “Technical Work Group” to discuss modifications to the Fourth Methodology Order;
  - ii. by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

Respectfully submitted this 28<sup>th</sup> day of April 2023.

**SOMACH SIMMONS & DUNN**

By   
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Sarah A. Klahn, ISB # 7928

**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-DC-2010-001

**SCHEDULING ORDER AND  
ORDER AUTHORIZING REMOTE  
APPEARANCE AT HEARING**

**BACKGROUND**

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) as well as his *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”). The Methodology Order revises the nine steps used to determine material injury to members of the Surface Water Coalition (“SWC”). The As-Applied Order predicts a shortfall for the 2023 irrigation season, which will result in mitigation requirements or curtailment for ground water rights with priority dates junior to December 30, 1953.

The Director, anticipating that one or more parties would request a hearing pursuant to Idaho Code § 42-1701A(3) in response to one or both of the orders, issued a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“Notice of Hearing”) on April 21, 2023. In addition to scheduling an in-person hearing on the Methodology Order and As-Applied Order for June 6–10, 2023, the Notice of Hearing authorized the parties to begin conducting discovery immediately and scheduled a prehearing conference, which the Director held on April 28, 2023.

During the prehearing conference, the Director identified two Department witnesses who will be made available to the parties for deposition and will testify at the hearing—Jennifer Sukow, Engineer, Technical 2, and Matthew Anders, Technical Services Bureau Chief. The Director stated he did not intend to request a technical staff memorandum in advance of the hearing. Some counsel expressed concern about having enough time to respond to discovery given the compressed period for the hearing. The Director agreed to limit the scope and timing of discovery to address the concerns. Counsel for the Coalition of Cities<sup>1</sup> and McCain Foods USA, Inc., Candice McHugh, notified the Director of an out-of-state conflict with the hearing dates and requested that the Director allow her to formally appear virtually instead of in-person on June 6–10, 2023. No parties objected to attorney McHugh’s remote participation request

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<sup>1</sup> In this matter, the Coalition of Cities refers to the Idaho cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

during the prehearing. Further, the Director and the parties discussed and agreed upon a discovery and hearing schedule. The order below memorializes the various schedules and deadlines articulated during the prehearing conference on April 28, 2023.

## **ORDER**

**IT IS HEREBY ORDERED** that discovery will be limited as follows: (1) The parties shall not engage in interrogatories or requests for admissions; (2) The parties may request production of documents. The party upon whom a request for production of documents is served shall respond to the request within 10 days from the date the request is served.

**IT IS FURTHER ORDERED** that the following schedule is ADOPTED:

- |  |   |
|--|---|
| <b>May 5, 2023</b>                               | <ol style="list-style-type: none"><li>1) Deadline for the Department to identify materials Ms. Sukow and Mr. Anders may rely upon at the hearing.</li><li>2) Deadline for the Department to summarize topics Ms. Sukow and Mr. Anders will testify about at the hearing.</li><li>3) Deadline for the parties to submit to the Department a written statement of proposed issues for the hearing.</li></ol>                |
| <b>May 10, 2023</b>                              | Deadline for the Department to augment its above-mentioned list of materials Ms. Sukow and Mr. Anders may rely on at the hearing, if needed.  |
| <b>7 Days Prior to Hearing Day 1<sup>2</sup></b> | <ol style="list-style-type: none"><li>1) Deadline for the parties to complete all discovery.</li><li>2) Deadline for the parties to deliver copies of their expert reports to the other parties.</li><li>3) Deadline for the parties to exchange and file with the Department their proposed lay and expert witness lists. The parties should include a general summary of each witness' anticipated testimony.</li></ol> |

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<sup>2</sup> During the hearing one of the parties astutely suggested that the discovery deadline should be pinned to the hearing date, rather than an agreed upon calendar date, in the event the hearing date was moved.

- 4) Deadline for the parties to exchange and file with the Department their proposed exhibit lists. The parties shall also exchange and submit to the Department an electronic copy (via e-file email, USB thumb drive, or disc(s)) of their pre-marked exhibits using the following reserved exhibit numbers:

Exhibit Numbers	Assigned Party
1–99	Surface Water Coalition
100–199	Idaho Ground Water Appropriators
200–299	Coalition of Cities
300–399	City of Pocatello
400–499	City of Idaho Falls
500–599	Bonneville-Jefferson Ground Water District
600–699	McCain Foods USA, Inc.

Any future parties who have yet to appear and wish to submit exhibits at the hearing shall request a set of designated exhibit numbers from the Department by emailing [sarah.tschohl@idwr.idaho.gov](mailto:sarah.tschohl@idwr.idaho.gov) at least two business days prior to this deadline.

**Hearing  
Day 1**

Prior to the start of the hearing, the parties shall submit to the Department three physical copies of their pre-marked and numbered, proposed hearing exhibits.

**IT IS FURTHER ORDERED** that in accordance with IDAPA 37.01.01.552 and for good cause shown, counsel for the Coalition of Cities and McCain Foods USA, Inc., Candice McHugh, may appear virtually by video link on June 6–10, 2023. Sarah Tschohl, on behalf of the Department, will email the remote participation link to Candice McHugh no later than May 30, 2023.

DATED this 2<sup>nd</sup> day of May 2023.

  
 Gary Spackman  
 Director

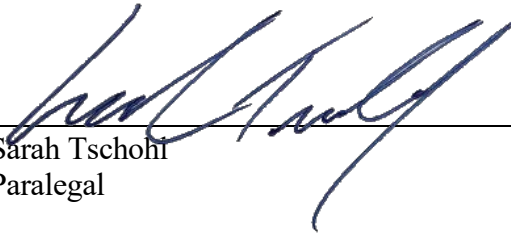
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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<p>Thomas J. Budge  Elisheva M. Patterson  RACINE OLSON  P.O. Box 1391  Pocatello, ID 83204-1391  <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>  <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input checked="" type="checkbox"/> Email</p>
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Sarah Tschohl  
Paralegal



RECEIVED

May 02, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-11**

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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

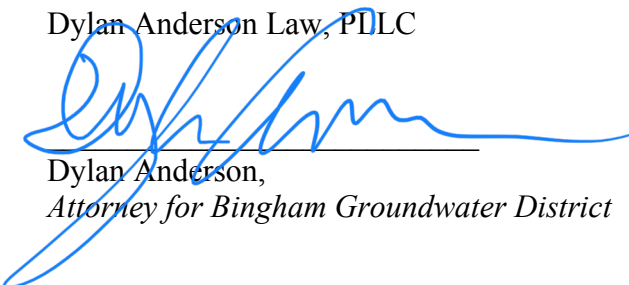
Docket No. CM-DC-2010-001  
Docket No. CM-MP-2016-001

**NOTICE OF SUBSTITUTION OF  
COUNSEL FOR BINGHAM GROUND  
WATER DISTRICT**

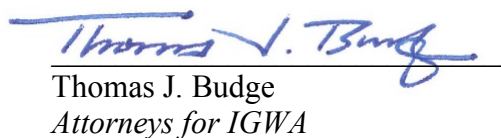
Pursuant to IDAPA 37.01.01.204, Dylan Anderson of Dylan Anderson Law, provides notice of substitution of counsel on behalf of Bingham Groundwater District. Bingham Ground Water District currently participates in this proceeding through Idaho Ground Water Appropriators, Inc. (IGWA). Pursuant to this substitution of counsel, Bingham Ground Water District will forthwith be represented independently of IGWA. This substitution will not cause any delay or enlarge the issues involved in this proceeding.

DATED this 2 day of May, 2023.

Dylan Anderson Law, PLLC

  
Dylan Anderson,  
*Attorney for Bingham Groundwater District*

RACINE OLSON, PLLP

  
Thomas J. Budge  
*Attorneys for IGWA*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of May, 2023, a true and correct copy of the foregoing document was served via email to the following:

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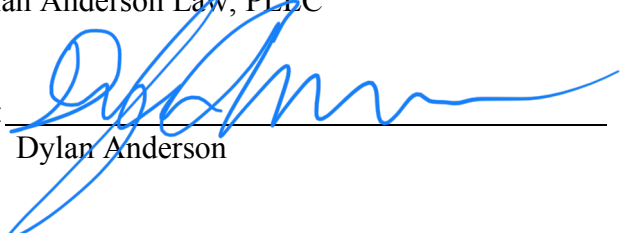
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By: \_\_\_\_\_

Dylan Anderson



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May 02, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-12**

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*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001


**IGWA’s Petition for Reconsideration  
and Request for Hearing**

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting for and on behalf of North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls Area Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District, submit this Petition for Reconsideration and Request for Hearing pursuant to Idaho Code § 42-1701(A)(3), Idaho Code § 67-5246(4), and Rule 740.02.b. of the Rules of Procedure of the Idaho Department of Water Resources, requesting a hearing on the Department’s *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”) and *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”) issued April 21, 2023.

IGWA has not completed a thorough review of the Fifth Methodology Order or the April 2023 As-Applied Order, but preliminarily IGWA wishes to address the issues identified *Coalitions of Cities’ Amended Request for Hearing* and *Pocatello’s Request for Hearing* filed April 28, 2023. IGWA reserves the right to identify additional ground for contesting the Director’s action once it completes a thorough review of the Fifth Methodology Order and the As-Applied Order.


Dated this 2<sup>nd</sup> day of May, 2023.

RACINE OLSON, PLLP

By:   
Thomas J. Budge  
*Attorneys for IGWA*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of May, 2023, I served the foregoing document on the persons below via email as indicated:

  
Thomas J. Budge

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<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p><a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>
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**EXHIBIT A-13**

*Attorney for Amalgamated Sugar 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-DC-2010-001  
AMALGAMATED SUGAR  
COMPANY'S REQUEST FOR  
HEARING, OBJECTION,  
IDENTIFICATION OF ISSUES  
AND NOTICE OF MITIGATION**

**REQUEST FOR HEARING**

Pursuant to Idaho Code § 42-1701(A)(3), Amalgamated Sugar Company (“Amalgamated”) through its undersigned attorney, requests a hearing on the Department’s *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover* and *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”) both issued April 21, 2023.



## **OBJECTION TO ORDER**

Amalgamated objects to the *Fifth Amended Order* and the 2023 As-Applied Order's implementation this upcoming season for the reasons set forth below which it also identifies as issues for hearing. Amalgamated reserves the right to revise the issues as more information becomes available.

### **STATEMENT OF ISSUES FOR HEARING**

Among the issues the Amalgamated has identified for hearing are:

- a) IDWR's new reliance on transient modeling;
- b) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;
- d) IDWR's failure to consider changes in the efficiency of the SWC's operations;
- e) IDWR's failure to consider all sources of supply available to the SWC;
- f) IDWR's use of 2018 as the new baseline year; and
- g) IDWR's violation of Amalgamated's due process rights by not providing it actual notice of the order and requisite deadlines, and even if it was deemed that it was given "notice" because it shared an attorney with the Coalition of Cities, by giving it less than 10 business days to provide a mitigation solution after a wholesale change in methodology, by depriving it of the ability to develop its own mitigation plan to protect its water rights, by requiring compliance with a deadline to avoid curtailment without actual notice of the deadline and in a non-drought year, by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

## NOTICE OF MITIGATION

Pursuant to the *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”) issued April 21, 2023 demand that:

On or before May 5, 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.

Amalgamated submits this *Notice of Mitigation*. Amalgamated owns and uses water rights junior to the December 30, 1953, date. On Tuesday, May 2, 2023 Amalgamated petitioned Magic Valley Ground Water District (“MVGWD”) to become a member of MVGWD and to be covered by its approved mitigation plan. Counsel for Amalgamated was informed by the Chairman of MVGWD, Dean Stevenson, that the letter had been received, that he had spoken to the board members and that they will take up Amalgamated petition at its Tuesday, May 9, 2023 meeting. Chairman Stevenson also indicated to counsel for Amalgamated that he expected the petition to be approved on Tuesday and that MVGWD would send a letter to IDWR and Amalgamated’s counsel to that effect next week. Aff. of McHugh filed herewith.

Amalgamated requests an order, or some other applicable document, from IDWR that it has met the May 5, 2023 deadline and established to the “satisfaction of the Director, that they can mitigation for their proportionate share ... with an approved mitigation plan” by becoming members of MVGWD.

Submitted this 4th day of May, 2023

**MCHUGH BROMLEY, PLLC**

/s/ Candice M. McHugh  
Candice M. McHugh  
*Attorney for Amalgamated*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2023, the above and foregoing, was served by email to the following:

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/s/ Candice M. McHugh  
Candice M. McHugh

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*Attorney for Amalgamated Sugar 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-DC-2010-001**

**DECLARATION OF CANDICE M.  
MCHUGH IN SUPPORT OF  
NOTICE OF MITIGATION**

I, Candice McHugh hereby declare and state as follows:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I am an attorney for Amalgamated Sugar Company (“Company”) and represent the Company on its water rights and water right matters.
3. On Tuesday, May 2, 2023, I petitioned Magic Valley Ground Water District (MVGWD) on the Company’s behalf to join MVGWD for mitigation of the Company’s water rights located within Basin 36.

4. On Thursday, May 4, 2023, I spoke with Dean Stevenson, Chairman of the MVGWD. He indicated that the petition was received, that he spoke with all the board members and he expects the petition to be approved at the Tuesday, May 9, 2023 meeting. He indicated that I was authorized to express this to IDWR in order to allow the Company to meet the deadline set forth in the Dated this 4<sup>th</sup>, day of May, 2023. He also told me that MVGWD would inform IDWR of its decision next week.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED May 4, 2023

MCHUGH BROMLEY, PLLC



---

Candice M. McHugh  
Attorney Amalgamated Sugar Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2023, the above and foregoing, was served by email to the following:

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/s/ Candice M. McHugh  
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Attorney for McCain Foods USA, Inc.

**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-DC-2010-001  
MCCAIN FOODS USA, INC.'S  
NOTICE OF MITIGATION**

**REQUEST FOR HEARING**

Pursuant to the *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”) issued April 21, 2023 demand that:

On or before May 5, 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.

McCain Foods USA, Inc., (“McCain”) by and through its attorney of record, submits this *Notice of Mitigation*. McCain owns and uses water rights junior to the December 30, 1953,

date. On Tuesday, May 2, 2023 McCain petitioned Southwest Irrigation District (“SWID”) to become a member of SWID and to be covered by its approved mitigation plan. Counsel for McCain was informed by letter on May 3, 2023, that McCain has been approved to join SWID as a member and that McCain will be covered under its mitigation plan. A copy of the letter is attached hereto as Exhibit A and incorporated herein. SWID also indicated that a letter was sent to IDWR informing IDWR of this fact.

McCain requests an order, or some other applicable document, from IDWR that it has established to the “satisfaction of the Director, that they can mitigation for their proportionate share ... with an approved mitigation plan” by becoming members of SWID.

Submitted this 4<sup>th</sup> day of May, 2023

**MCHUGH BROMLEY, PLLC**

/s/ Candice M. McHugh  
Candice M. McHugh  
*Attorney for McCain*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of April, 2023, the above and foregoing, was served by email to the following:

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May 3, 2023

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RE: Petition to Join Southwest Irrigation District for Mitigation

Dear Candice:

Pursuant to your request of May 2, 2023, the Board approved the mitigation for the following water rights:

WaterRight	Priority Date	Owner	CFS	Volume	Combined Limit	WaterUse	Condition
45-2747	3/15/1960	McCain Foods*	4.00	2062.80	-	Industrial	-
45-2748	3/6/1961	McCain Foods	0.60	309.40	-	Industrial	-
45-2758	3/15/1960	McCain Foods	2.08	1072.70	-	Commercial	-
45-13970	9/1/1957	McCain Foods	2.66	1371.80	-	Industrial	-
Totals:			9.34	4816.70			

\* McCain Foods USA Inc.

Southwest charges \$900 per CFS per year billed in arrears.

It is the policy of Southwest Irrigation District to charge new participants in mitigation for the previous three years. In keeping with that procedure, the back fees for McCains would be \$25,218.00. It may be paid over three years if necessary.

The 2023 assessment will be billed in the spring of 2024.

We have forwarded a letter to the Idaho Department of Water Resources indicating the

approval of McCain Foods USA Inc. for mitigation.

I have sent a copy of this letter to you by email and I placed one in regular mail to your office.

Very truly yours,

**PARSONS, LOVELAND, SHIRLEY &  
LINDSTROM, LLP**

A handwritten signature in black ink, appearing to read "William A. Parsons". The signature is written in a cursive style with a large initial "W".

William A. Parsons  
wparsons@pmt.org

Robert L. Harris (ISB No. 7018)  
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**EXHIBIT A-16**

*Attorneys for the City of Idaho Falls*

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

**CITY OF IDAHO FALLS  
CHALLENGE AND REQUEST FOR  
HEARING**

The City of Idaho Falls (“Idaho Falls” or “City”), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., petitions for a hearing pursuant to Idaho Code § 42-1701A(3) in the above-captioned matter.

On April 21, 2023, the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) issued a *Fifth Amended Methodology Order Regarding Methodology for Determining material Injury to Reasonable In-Season Demand And Reasonable Carryover* (the “Methodology Order”) and a *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”). The City objects to the *Methodology Order* and the *2023 As-Applied Order*, and

because the only relief allowed for in the *Methodology Order* and the *2023 As-Applied Order* is to contest this action by requesting a hearing, the City hereby requests a hearing in this matter pursuant to Idaho Code § 42-1701A(3). The City reserves the right to supplement this filing with a list of issues when so directed in this contested case.

Dated this 4<sup>th</sup> day of May, 2023.

/s/ Robert L. Harris  
Robert L. Harris, Esq.  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.



**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of May, 2023, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

**DOCUMENT SERVED: CITY OF IDAHO FALLS CHALLENGE AND REQUEST FOR HEARING**

**ATTORNEYS AND/OR INDIVIDUALS SERVED:**

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<p>Randall D. Fife  City Attorney, City of Idaho Falls  P O Box 50220  Idaho Falls, ID 83405  <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>	<p><input type="checkbox"/> Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> Email</p>

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/s/ Robert L. Harris  
Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

RECEIVED

May 04, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-17**

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**BONNEVILLE-JEFFERSON  
GROUND WATER DISTRICT'S  
REQUEST FOR HEARING**

The Bonneville-Jefferson Ground Water District (hereafter “Bonneville-Jefferson”), acting for and on behalf of its respective members, through counsel, submits this Request for Hearing pursuant to Idaho Code § 42-1701(A)(3), Idaho Code § 67-5246(4), and Rule 740.02.b. of the Rules of Procedure of the Idaho Department of Water Resources, requesting a hearing on the Department’s *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”)

and *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”) issued April 21, 2023.

Bonneville-Jefferson is in the process of reviewing the Fifth Methodology Order and the April 2023 As-Applied Order, but plans to address the issues identified in the Coalitions of Cities’ *Amended Request for Hearing* and Pocatello’s *Request for Hearing* filed April 28, 2023. In addition, Bonneville-Jefferson identifies the following issues for the hearing so far:

- 1) The procedures and process used by the Department in issuing the Methodology Order.
- 2) The technical rationale for the Methodology Order.
- 3) The policy behind changing to transient state modeling in the Methodology Order.
- 4) The analysis and factual basis used in the Methodology Order.
- 5) The Department’s new reliance on transient modeling.
- 6) The Department’s failure to consider the Twin Falls Canal Company’s increase in diversions over the last twenty years.
- 7) The Department’s failure to consider changes in the efficiency of the SWC’s operations.
- 8) The Department’s failure to consider all sources of supply available to the SWC
- 9) The Department’s rationale and factual basis for using 2018 as the new baseline year.
- 10) The definition of futile call, including waste, reasonable time, and efficiency.
- 11) Whether the Methodology Order results in the optimum development of water resources in the public interest.
- 12) Whether the Methodology Order is contrary to the State’s interest in securing the maximum use and benefit, and least wasteful use, of its water resources

- 13) Whether the Methodology Order permits SWC to command the entirety of large volumes of water in a surface or ground water source to support its appropriation contrary to the public policy of reasonable use of water as described in the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.
- 14) Whether the Department provided due process to water users in issuing the Methodology Order.
- 15) Bonneville-Jefferson reserves the right to present additional issues that may be revealed through the discovery process.

Bonneville-Jefferson reserves the right to identify additional ground for contesting the Director's action once it completes a thorough review of the Fifth Methodology Order and the As-Applied Order.

Respectfully submitted this the 4<sup>th</sup> day of May 2023.

DATED: May 4, 2023

OLSEN TAGGART PLLC

/s/ *Skyler C. Johns*

SKYLER C. JOHNS

## CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of May 2023, I served the foregoing document on the persons below via email as indicated:

/s/ Michelle J. Castro  
Michelle J. Castro  
Legal Assistant

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**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-DC-2010-001**

**JOINT NOTICE OF DEPOSITION  
DUCES TECUM OF  
JENNIFER SUKOW, P.E., P.G.**

TO: Jennifer Sukow and all counsel of record.

PLEASE TAKE NOTICE that on **May 10, 2023, from 8:00 a.m. – 3:30 p.m.**, counsel for the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively, the “Coalition”), City of Pocatello, City of Idaho Falls, Idaho Ground Water Appropriators, Inc. (“IGWA”), Bonneville-Jefferson Ground Water District, and Bingham Groundwater District in the above-entitled action will take the deposition of JENNIFER SUKOW, P.E., P.G., in accordance with the Order Authorizing Discovery issued April 21, 2023, in this matter, IDAPA 37.01.01.520.01.a and 37.01.01.520.02, and Idaho Rules of Civil Procedure 26, 30(a), and 34, and continue from day to day thereafter until completion, at the offices of the **Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83702**. The deposition will be “hybrid,” with the witness, court reporter, and some attorneys present at the Idaho Department of Water Resources (“IDWR” or “Department”), and others present via the Zoom video platform, hosted by M&M Court Reporting. Participants will receive a Zoom link via email from M&M the day before the deposition.

### **DOCUMENTS REQUESTED**

The words used in these requests for identification of documents for copying and inspection are to be interpreted according to their plain meanings. The following definitions are provided in the spirit of good faith and cooperation to assist the Responding Party in preparing responses to each of the following demands below.

A. “Announcement(s)” means any document or electronic communication that is not merely a publication or news release and that advises ground water users within the Eastern Snake Plain Aquifer of a particular action to be taken by IDWR.

B. “Document(s)” shall mean the original, all copies and drafts of papers and writings of every kind, description and form, whether handwritten or typed, and all mechanical, magnetic media and electronic recordings, records and data of every kind, description and form, and all photographs of every kind, and including, without limiting the generality of the foregoing, the following: correspondence, letters, notes, e-mails, computer files, memoranda, reports, notebooks, binders, drawings, studies, analyses, drafts, diaries, calendars, datebooks, appointment books, day-timers, intra- or inter-office communications, canceled checks, minutes, bulletins, circulars, pamphlets, telegrams, instructions, work assignments, messages (including reports, notes and memoranda of telephone conversations and conferences), telephone statements, calendar and diary entries, desk calendars, job or transaction files, books of account, ledgers, bank statements, promissory notes, invoices, charge slips, working papers, graphs, charts, lab books, lab notes, lab journals or notebooks, evaluation or appraisal reports, pleadings, transcripts of testimony or other documents filed or prepared in connection with any court or agency or other proceeding, deeds, mortgages, deeds of trust, contracts, agreements, assignments, instruments, charges, opinions, official statements, prospectuses, appraisals, feasibility studies, trusts, releases of claims, charters, certificates, licenses, leases, invoices, computer printouts or programs, summaries, audio, video or sound recordings, cassette tapes, video recorded, electronic or laser recorded, or photographed information. “Document(s)” are to be taken as including all attachments, enclosures and other documents that are attached to, relate to or refer to such documents.

C. “External Communications” include, but are not limited to, emails, text messages, letters, notes, phone calls, voicemails, and any voice and audio recordings between

IDWR employees, including, but not limited to managers, directors, or board members and persons that are not employed by the Department.

D. “Internal Communications” include, but are not limited to, emails, text messages, letters, notes, phone calls, voicemails, and any voice and audio recordings between IDWR employees, including, but not limited to managers, directors, or board members.

E. “Notice” means any publication or news release advising ground water users within the Eastern Snake Plain Aquifer of a particular action to be taken by IDWR.

The Deponent is required to produce the following to the deposition:

1. Any and all documents reflecting the Deponent’s involvement in the issuance of the Fifth Amended Methodology Order.
2. Any and all documents the Deponent is aware of, whether or not authored by her, that reflect Department employees’ input on the Department’s decision to move from steady state to transient modeling in the Fifth Methodology Order.
3. Any memoranda or reports authored by the Deponent or others that report to her that describe the change in the number of water rights likely to be curtailed as a result of the Department’s reliance on transient modeling in the Fifth Methodology Order.
4. All model files, including input files, output files, post-processing analyses, documentation, communications, and notes associated with the Eastern Snake Plain Aquifer Model (“ESPAM”) transient curtailment run used to support the proposed December 10, 1953 curtailment date that were not already provided.
5. All model files, including input files, output files, post-processing analyses, documentation, communications, and notes associated with any and all

ESPAM transient curtailment runs used to evaluate curtailment dates other than the December 10, 1953 curtailment date.


6. All model files, including input files, output files, post-processing analyses, documentation, communications, and notes for any and all ESPAM steady-state curtailment runs used to evaluate potential curtailment dates for the 2023 Methodology Order.
7. Any and all documents relied upon by the Department to support the technical rationale for the original use of Steady State.
8. Any and all internal and external communications regarding or pertaining to the information provided pursuant to paragraph 1 above.
9. Any and all Department notices or announcements regarding the Department's transition from Steady State to Transient State.
10. Any and all internal and external communications pertaining to the information provided pursuant to paragraph 3 above.
11. Any and all documents pertaining to the Department's decision to transition from Steady State to Transient State.
12. Any and all internal and external communications pertaining to the information provided pursuant to paragraph 5 above.
13. Any and all documents and electronic or recorded communications or discussions pertaining to credits for accruals to non-target reaches and non-target time periods.
14. Any and all internal and external communications regarding or pertaining to the information provided pursuant to paragraph 7 above.

15. Any and all documents pertaining to modeling stress file for the model run that produced the 1953 curtailment date in the *April 2023 As-applied Order* issued on April 21, 2023, in a format readable by ESRI software, a text reader, or a spreadsheet program (e.g., a Well File from Item C on page 7 of the IWRRI curtailment scenario).
16. Any and all internal and external electronic or recorded communications regarding or pertaining to the information provided pursuant to paragraph 9 above.
17. All documents, analyses, reports, data, and other materials evaluated, examined, or developed in connection with, or related to, model uncertainty, the futile call doctrine, or implementation of a trim line.
18. All model files, including input files, output files, post-processing analyses, documentation, communications, and notes for any model evaluation applying the transient modeling as a hindcast to previous years to 2023 where the Methodology Order applied.
19. All documents, analyses, reports, data, and other materials evaluated, examined, or developed in connection with, or related to, the differences between the ESPAM2.1 and ESPAM2.2 curtailment scenarios.
20. All documents, analyses, reports, data, and other materials evaluated, examined, or developed in connection with, or related to, the differences between the modeled project efficiencies for SWC irrigation entities in ESPAM2.1 and ESPAM2.2.

21. All documents, analyses, reports, data, and other materials evaluated, examined, or developed in connection with, or related to, the Department's determination and reasoning to use steady state modeling in the previous as applied orders.
22. Any and all internal and external electronic or recorded communications regarding or pertaining to the information provided pursuant to paragraph 18 above.
23. Any and all internal and external electronic or recorded communications regarding or pertaining to the information provided pursuant to paragraph 19 above.
24. Any and all internal and external electronic or recorded communications regarding or pertaining to the information provided pursuant to paragraph 20 above.
25. Any and all internal and external electronic or recorded communications regarding or pertaining to the information provided pursuant to paragraph 21 above.

DATED May 4, 2023.

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**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-DC-2010-001**

**JOINT NOTICE OF DEPOSITION  
DUCES TECUM OF  
MATTHEW ANDERS, P.G.**

TO: Matthew Anders and all counsel of record.

PLEASE TAKE NOTICE that on **May 12, 2023, from 9:00 a.m. – 5:00 p.m.**, counsel for the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively, the “Coalition”), City of Pocatello, City of Idaho Falls, Idaho Ground Water Appropriators, Inc. (“IGWA”), Bonneville-Jefferson Ground Water District, and Bingham Groundwater District in the above-entitled action will take the deposition of MATTHEW ANDERS, P.E., in accordance with the Order Authorizing Discovery issued April 21, 2023, in this matter, IDAPA 37.01.01.520.01.a and 37.01.01.520.02, and Idaho Rules of Civil Procedure 26, 30(a), and 34, and continue from day to day thereafter until completion, at the offices of the **Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83702**. This deposition will be “hybrid”, with the witness, court reporter, and some attorneys present at the Idaho Department of Water Resources (“IDWR” or “Department”), and others present via the Zoom video platform, hosted by M&M Court Reporting. Participants will receive a Zoom link via email from M&M the day before the deposition.

### **DOCUMENTS REQUESTED**

The words used in these requests for identification of documents for copying and inspection are to be interpreted according to their plain meanings. The following definitions are provided in the spirit of good faith and cooperation to assist the Responding Party in preparing responses to each of the following demands below.

A. “Announcement(s)” means any document or electronic communication that is not merely a publication or news release and that advise ground water users within the Eastern Snake Plain Aquifer of a particular action to be taken by IDWR.

B. “Document(s)” shall mean the original, all copies and drafts of papers and writings of every kind, description and form, whether handwritten or typed, and all mechanical, magnetic media and electronic recordings, records and data of every kind, description and form, and all photographs of every kind, and including, without limiting the generality of the foregoing, the following: correspondence, letters, notes, e-mails, computer files, memoranda, reports, notebooks, binders, drawings, studies, analyses, drafts, diaries, calendars, datebooks, appointment books, day-timers, intra- or inter-office communications, canceled checks, minutes, bulletins, circulars, pamphlets, telegrams, instructions, work assignments, messages (including reports, notes and memoranda of telephone conversations and conferences), telephone statements, calendar and diary entries, desk calendars, job or transaction files, books of account, ledgers, bank statements, promissory notes, invoices, charge slips, working papers, graphs, charts, lab books, lab notes, lab journals or notebooks, evaluation or appraisal reports, pleadings, transcripts of testimony or other documents filed or prepared in connection with any court or agency or other proceeding, deeds, mortgages, deeds of trust, contracts, agreements, assignments, instruments, charges, opinions, official statements, prospectuses, appraisals, feasibility studies, trusts, releases of claims, charters, certificates, licenses, leases, invoices, computer printouts or programs, summaries, audio, video or sound recordings, cassette tapes, video recorded, electronic or laser recorded, or photographed information. “Document(s)” are to be taken as including all attachments, enclosures and other documents that are attached to, relate to or refer to such documents.

C. “External Communications” include, but are not limited to, emails, text messages, letters, notes, phone calls, voicemails, and any voice and audio recordings between

IDWR employees, including, but not limited to managers, directors, or board members and persons that are not employed by the Department.

D. “Internal Communications” include, but are not limited to, emails, text messages, letters, notes, phone calls, voicemails, and any voice and audio recordings between IDWR employees, including, but not limited to managers, directors, or board members.

E. “Notice” means any publication or news release advising ground water users within the Eastern Snake Plain Aquifer of a particular action to be taken by IDWR.

The Deponent is required to produce the following to the deposition:

1. All documents, memoranda, reports, analyses or notes relied on by the Department to prepare the December 23, 2022 *Summary of Recommended Technical Revisions to the 4th Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover for the Surface Water Coalition*.
2. All documents, memoranda, reports, analyses or notes related to the Department’s decision to exclude from the Fifth Methodology Order:
  - a. Near Real Time METRIC for determining Crop Water Need;
  - b. April and July Regressions used to predict natural flow water supply.
3. All documents, memoranda, reports, analyses or notes related to the Department’s decision to *include* in the Fifth Methodology Order:
  - a. Transient modeling simulations for determining curtailment priority dates.
4. All documents, memoranda, reports, analyses, or notes related to the Department’s review of information submitted by Greg Sullivan and/or Spronk

Water Engineers to IDWR and the Methodology Technical Work Group (“TWG”) on December 12, 2022, December 21, 2022, and January 16, 2023, on behalf of the Eastern Snake Plain Aquifer (“ESPA”) Cities.

5. All documents, memoranda, reports, analyses, or notes related to the Department’s review of information submitted by Sophia Sigstedt to IDWR on January 16, 2023, on behalf of IGWA.
6. All documents, memoranda, reports, analyses or notes related to analyses of other potential Baseline Year(s) for use in the Fifth Methodology Order other than the 2018 BLY that was selected.
7. All documents, memoranda, reports, analyses, or notes related to the authorized and actual irrigated area of the Surface Water Coalition (“SWC”) members.
8. All documents, memoranda, reports, analyses, or notes related to SWC member groundwater pumping and other sources of water available to the SWC members.
9. All documents, memoranda, reports, analyses, or notes related to the analysis of reasonable carryover for the SWC members.
10. All materials presented at the technical meetings, and all analyses, reports, data sets, and other materials evaluated, examined, or developed in connection therewith.
11. All documents, memoranda, reports, analyses or notes related to any analysis of an average of multiple years for consideration on the Base Line Year(s) and associated hindcast in the Base Line Year(s) shortfall.

- 12. All court filings that discuss, review, analyze, or identify areas of the methodology that require further technical analysis.
- 13. All documents, memoranda, reports, analyses or notes related to any analysis in the intervening years from the 2015 TWG to the 2022 TWG related to the Fifth Methodology Order.
- 14. All documents, analyses, reports, data, and other materials evaluated, examined, or developed in connection with, or related to, the Department’s determination and reasoning to use steady state modeling in the previous as applied orders.

DATED May 4, 2023.

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*ATTORNEYS FOR THE CITY OF POCATELLO*

**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-DC-2010-001**

**POCATELLO'S STATEMENT OF  
ISSUES**

Pursuant to the Director's May 2, 2023 Scheduling Order in the captioned matter, the City of Pocatello (Pocatello), by and through its attorneys of record, Somach Simmons & Dunn, hereby submits this Statement of Issues:

- a) Whether changes to how IDWR computes curtailment dates (using transient groundwater modeling) are reasonable;
- b) Whether the ESPAM has been shown to be sufficiently accurate to support the proposed transient groundwater modeling to determine curtailment dates;

- c) Whether the Surface Water Coalition's ("SWC") actual irrigated acreage was properly determined for use in determining reasonable in-season demand;
- d) Whether a baseline demand that incorporates increases in SWC member diversions in recent years is valid basis for conjunctive administration;
- e) The reasonableness of Project efficiencies of the SWC members, trends in said efficiencies in recent years, and how the efficiency values are used in determining reasonable in-season demands;
- f) IDWR's failure to consider all sources of supply to the SWC;
- g) Whether 2018 is a reasonable new baseline year;
- h) Whether changes to determination of the reasonable in-season demand for the SWC members are reasonable and appropriate;
- i) Whether the level of conservatism employed in the methodology order is reasonable;
- j) Whether contingencies other than curtailment are available to protect senior-priority rights in the event that mitigation water becomes unavailable.
- k) Whether changes to how the reasonable carryover for the SWC members is computed are reasonable;
- l) Whether other analytical methods or modeling would reasonably improve the process for predicting and evaluating material injury;

- m) IDWR’s failure to apply Conjunctive Management Rule 20.03 (IDAPA 37.03.11.20.03) and principles of reasonableness generally;
- n) IDWR’s violation of due process rights of all interested water users:
  - i. by engaging in an ineffective public process related to the Department’s convening of the “Technical Work Group” to discuss modifications to the Fourth Methodology Order;
  - ii. by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

This Statement of Issues is based on Pocatello’s current understanding of the issues. Additional issues development of the facts and issues in this case, and additional issues may be identified as discovery and case development proceed.

Respectfully submitted this 4<sup>th</sup> day of May, 2023.

**SOMACH SIMMONS & DUNN**

By   
Sarah A. Klahn, ISB # 7928

*ATTORNEYS FOR CITY OF POCATELLO*

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May 05, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-21**

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**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-DC-2010-001**

**COALITION OF CITIES'  
STATEMENT OF ISSUES**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”), by and through their attorneys of record, Candice M. McHugh and Chris M. Bromley, and pursuant to the Director’s May 2, 2023, *Scheduling Order and Order Authorizing Remote Appearance at Hearing*, files this Statement of Issues in the above captioned matter.

Based on what is known now, and without the benefit of discovery, including the ability to conduct depositions, the Coalition of Cities identify the following issues for the hearing:

1. IDWR's new reliance on transient modeling;
2. IDWR's failure to properly identify the Surface Water Coalition's ("SWC") actual irrigated acreage used in the determination of reasonable in-season demand;
3. IDWR's failure to properly consider the SWC's changes in diversions over the last twenty years;
4. IDWR's failure to consider changes and reasonableness of the project efficiencies of the SWC's operations;
5. IDWR's failure to consider all sources of supply available to the SWC;
6. IDWR's use of 2018 as the new baseline year;
7. IDWR's failure to fully evaluate potential changes to the methodology used to determine the crop water needs of the SWC members;
8. IDWR's failure to fully evaluate potential changes to the methodology for forecasting the irrigation supplies of the SWC members;
9. IDWR's failure to fully evaluate changes to the methodology for determining reasonable carryover for the SWC members;
10. IDWR's failure to fully evaluate changes to the timing and procedures for updating the forecast shortages to the SWC members after the initial determination in April;

11. IDWR's failure to investigate whether the SWC members are using the water they divert efficiently and without waste, and in compliance with the terms of their decreed water rights;
12. IDWR's failure to standardize and make transparent the procedures for updating the SWC Methodology;
13. IDWR's failure to consider the comments received from members of the SWC Technical Working Group;
14. IDWR's failure to apply all factors in the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11, including but not limited to CM Rule 20.03 and principles of reasonableness generally; and
15. IDWR's violation of due process rights of all interested water users by:
  - a. by engaging in an apparently sham public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order and then largely ignoring that group's recommendations; and
  - b. by a continued abuse of process, authority and power in setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants and reflecting bias against junior water right uses.

The Coalition of Cities reserves the right to supplement this list of issues as information is learned through the discovery process.

Submitted this 5<sup>th</sup> day of May, 2023.

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/s/ Candice M. McHugh  
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*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

## STATE OF IDAHO

### DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE DISTRIBUTION  
 OF WATER TO VARIOUS WATER RIGHTS  
 HELD BY AND 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-DC-2010-001

#### **IGWA's Statement of Issues**

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Area Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry's Fork Ground Water District, files this statement of issues pursuant to the *Scheduling Order and Order Authorizing Remote Appearance at Hearing* issued May 2, 2023, in this matter.

This proceeding involves the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Fifth Methodology Order") issued only three weeks ago, on April 21-2023. It was issued without a prior hearing and is based on evidence that is not in the record of this contested case. Consequently, it is impossible at this stage for IGWA to identify all issues it wishes to address at the hearing in this matter. IGWA is still in the process of retaining technical experts needed to

analyze certain components of the Fifth Methodology Order. IGWA cannot provide a definitive list of issues it wishes to address until discovery has been completed and IGWA's technical experts complete their review of the facts and analyses utilized by the Department in developing the Fifth Methodology Order.

Until then, IGWA preliminarily identifies as issues for hearing all issues listed in *Pocatello's Statement of Issues* filed May 4, 2023, and *Coalition of Cities Statement of Issues* filed May 5, 2023. IGWA reserves the right to address issues identified by any other party to this proceeding, and any additional issues that IGWA identifies during discovery and develops in preparation for hearing in this matter.

As counsel for IGWA represented to the Director at the pre-hearing conference held April 28, 2023, the hearing currently scheduled for June 6-10, 2023, does not afford adequate time for IGWA to complete discovery, conduct a thorough review of all components of the Fifth Methodology Order, perform site investigations, develop expert reports, develop and organize evidence for presentation at the hearing, and otherwise fairly prepare for the hearing. Therefore, if the hearing is not continued until at least October, IGWA will be deprived of due process, and will not be able to address all issues raised by the Fifth Methodology Order.

DATED this 5<sup>th</sup> day of May, 2023.


RACINE OLSON, PLLP

By:   
Thomas J. Budge  
*Attorneys for IGWA*



## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

  
\_\_\_\_\_  
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**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-DC-2010-001  
MCCAIN FOODS USA, INC.'S  
STATEMENT OF ISSUES**

Pursuant to the oral order at the Prehearing conference in this matter held on April 28, 2023, by and through the undersigned attorney, McCain Foods USA, Inc. ("McCain") files this Statement of Issue.

**STATEMENT OF ISSUES FOR HEARING**

McCain identifies the following issues for hearing:

- a) IDWR's new reliance on transient modeling;

b) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;

d) IDWR's failure to consider changes in the efficiency of the SWC's operations;

e) IDWR's failure to consider all sources of supply available to the SWC;

f) IDWR's use of 2018 as the new baseline year; and

g) IDWR's violation of McCain's due process rights by not providing it actual notice of the order and requisite deadlines, and even if it was deemed that it was given "notice" because it shared an attorney with the Coalition of Cities, by giving it less than 10 business days to provide a mitigation solution after a wholesale change in methodology, by depriving it of the ability to develop its own mitigation plan to protect its water rights, by requiring compliance with a deadline to avoid curtailment without actual notice of the deadline and in a non-drought year, by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

Submitted this 5<sup>th</sup> day of May, 2023

**MCHUGH BROMLEY, PLLC**

/s/ Candice M. McHugh

Candice M. McHugh

*Attorney for McCain*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of May, 2023, the above and foregoing, was served by email to the following:

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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, AMERI-  
CAN 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-DC-2010-001

**Notice of Ground Water District  
Mitigation**

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District (collectively, the “Districts”), hereby provides notice that the Districts can mitigate for their proportionate share of the demand shortfall predicted in the Final Order Regarding April Forecast Supply (Methodology Steps 1-3) (“April 2023 As-Applied Order”) issued April 21, 2023, in this matter.

**Background**

The April 2023 As-Applied Order applies steps 1-3 of the Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover. It predicts that the Surface Water Coalition (“SWC”) will experience an in-season demand shortfall of 75,200 acre-feet in the absence of mitigation by junior-priority ground-water users. The order states: “On or before May 5, 2023, ground water users holding consumptive

water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.” (April 2023 As-Applied Order, p. 6.) “IGWA’s proportionate share of the predicted DS of 75,200 acre-feet is 63,645 acre-feet.” *Id.* at 5, fn 5.

IGWA has three approved mitigation plans. Its “Storage Water Plan” authorizes the Districts to provide mitigation via the delivery of storage water to the SWC. (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan in Response to the Surface Water Coalition’s Water Delivery Call*, IDWR Docket No. CM-MP-2009-007, June 3, 2010, p. 10.) Under this plan, “IGWA must provide proof of rental or an option to rent storage water and of a commitment of the storage water to the SWC within the deadlines provided by the Methodology Order and any order of the Director implementing the Methodology Order for a given year.” *Id.*

IGWA’s “Aquifer Enhancement Plan” authorizes the Districts to obtain mitigation credit for reach gains that accrue to the SWC as a result of (a) conversions of farmland from groundwater to surface water irrigation; (b) fallowing of groundwater-irrigated acres through the Conservation Reserve Enhancement Program (CREP), Agricultural Water Enhancement Program (AWEP), or other voluntary program; and (c) groundwater recharge.” (Order Approving Mitigation Plan, *In the Matter of the Idaho Ground Water Appropriators, Inc.’s Mitigation Plan for Conversions, Dry-Ups, and Recharge*, IDWR Docket No. CM-MP-2009-006, May 14, 2010, p. 1.) Under this plan, “[i]f mitigation credit is sought by IGWA, the Director shall determine the appropriate credit, if any, to provide.” *Id.* at 2.

IGWA’s “Settlement Agreement Plan” authorizes the Districts to obtain mitigation protection by complying with a settlement agreement entered into between the Districts and the SWC in 2015. (Final Order Approving Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 2, 2016; Final Order Approving Amendment to Stipulated Mitigation Plan, *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001, May 9, 2017.) Under this plan, the Districts are required to conserve 240,000 acre-feet of water and deliver 50,000 acre-feet of storage annually to the SWC as set forth in the Amended Final Order Regarding Compliance with Approved Plan issued April 24, 2023.

### **Notice of Mitigation**

The Districts identified in the following table will provide mitigation to the SWC under the Storage Water Plan. These districts’ proportionate shares of the 63,645 acre-feet demand shortfall predicted in the April 2023 As-Applied Order are as follows:

<b>District</b>	<b>Proportionate Share</b>
Bingham GWD	13,384
Bonneville-Jefferson GWD	8,469
Jefferson-Clark GWD	6,939
Total	28,792



Attached hereto as Appendix A are copies of storage water leases totaling 38,714 acre-feet, submitted on behalf of the above-identified Districts.

The Districts identified in the following table will provide mitigation under the Settlement Agreement Plan. These Districts’ proportionate shares of the 240,000 acre-feet of conservation and the 50,000 acre-feet of storage obligations are as follows:

District	240,000 AF	50,000 AF
Aberdeen-American Falls GWD	39,395	8,705
Carey Valley GWD	821	173
Henry’s Fork GWD + Madison GWD	6,299	0
Magic Valley GWD	37,931	8,000
North Snake GWD	29,765	6,410
Total	114,211	23,288

Each District’s proportionate share of 240,000 is based on the Director’s allocation set forth in the *Amended Final Order Regarding Compliance with Approved Mitigation Plan* issued April 24, 2023, in this matter. Each District’s proportionate share of 50,000 is based on the allocation IGWA has utilized since the Settlement Agreement Plan was implemented in 2016. The Settlement Agreement Plan does not require that storage water contracts be reported to the SWC or IDWR; it simply requires that storage be “delivered to SWC 21 days after the date of allocation.” However, IGWA reports voluntarily that the above-identified Districts have storage leases in place for 23,288 acre-feet.

Dated this 5<sup>th</sup> day of May, 2023.

RACINE OLSON, PLLP

By: 

Thomas J. Budge  
Attorneys for IGWA

**APPENDIX A**

**Storage Leases**

Bingham Ground Water District  
Bonneville-Jefferson Ground Water District  
Jefferson-Clark Ground Water District

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Idaho Irrigation District (lessor) agrees to lease 6,678 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Alan Melzer 5-1-23 Imeko Irrigation  
Lessor Signature Date Title, Canal Company  
District

[Signature] 5/5/23 BGWD  
Lessee Signature Date Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Snake River Valley Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

\_\_\_\_\_  
Lessor Signature      5-1-23      Date      Manager      SKUD  
\_\_\_\_\_  
Title, Canal Company

\_\_\_\_\_  
Lessee Signature      5-1-23      Date      BGWD      Manager  
\_\_\_\_\_  
Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

New Sweden Irrigation District (lessor) agrees to lease 5,009 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Kent Sapp 5-1-23 MANAGER NSID  
Lessor Signature Date Title, Canal Company

M. J. [Signature] 5/5/23 BGWD  
Lessee Signature Date Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_



**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Enterprize Canal Company (lessor) agrees to lease 1,670 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

David K  
Lessor Signature

Enterprise Canal Company  
Title Canal Company

5/3/23  
Date

Lessee Signature

Date

Canal Company or Diversion Name

Mh

5/5/23

BGWD

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Sunnydell Irrigation District (lessor) agrees to lease 334 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

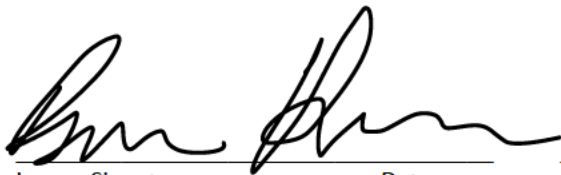
Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

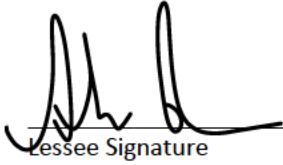


Lessor Signature

Date

V.P. Summydel Canal

Title, Canal Compan

 5/5/23

Lessee Signature

Date

BGWD

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Aberdeen-Springfield Canal Co (lessor) agrees to lease 3,500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

[Signature] 5/5/23  
Lessor Signature Date

General Manager  
Title, Canal Company

[Signature] 5/5/23  
Lessee Signature Date

BGWD  
Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Blackfoot Irrigation Company (lessor) agrees to lease 500 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

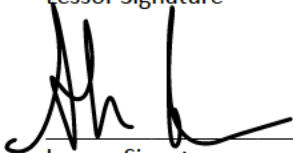


Lessor Signature

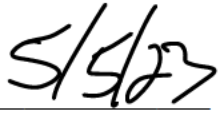
Date



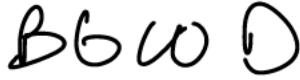
Title, Canal Company



Lessee Signature



Date



Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_



**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Corbett Slough Ditch Company (lessor) agrees to lease 750 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

[Signature]
5.5-2023
Corbett VP

Lessor Signature

Date

Title, Canal Company

[Signature]

5/5/23

B6WD

Lessee Signature

Date

Canal Company or Diversion Name

=====

*(official use only)*

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Parsons Ditch Company (lessor) agrees to lease 100 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

Lessor Signature

Date

Title, Canal Company

  
Lessee Signature

5/5/23  
Date

BGWD  
Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Peoples Canal & Irrigation Co (lessor) agrees to lease 2,514 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

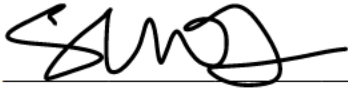
Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

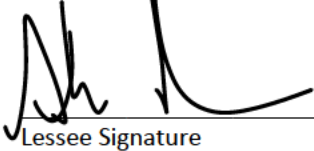


Lessor Signature

Date



Title, Canal Company



Lessee Signature

5/5/23

Date

BGWD

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Riverside Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

76th Le...  
\_\_\_\_\_  
Lessor Signature                      Date                      Title, Canal Company

ML 5/5/23 BGD  
\_\_\_\_\_  
Lessee Signature                      Date                      Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_



**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

The United Canal Company \_\_\_\_\_ (lessor) agrees to lease 400 acre-feet of storage to Bingham Ground Water District \_\_\_\_\_ (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor’s storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders’ storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor’s space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1’s final rental delivery records.

*[Handwritten Signature]*

Lessor Signature

Date

*[Handwritten Signature]*

Title, Canal Company

*[Handwritten Signature]*

Lessee Signature

5/5/23

Date

B G W D

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Watson Canal Company (lessor) agrees to lease 50 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

_____ Lessor Signature	_____ Date	_____ Title, Canal Company
<i>Alc</i>	<i>5/5/23</i>	<i>BGWD</i>
_____ Lessee Signature	_____ Date	_____ Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL - PRIVATE LEASE AGREEMENT**

Wearyrick Ditch Company (lessor) agrees to lease 150 acre-feet of storage to Bingham Ground Water District (lessee) for the 2023 irrigation season at a price of \$      according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

Description of Lease:

Name of River or Stream from which lease is diverted: Snake River  
Canal or Pump Name and location: TBD  
Place of Use description: TBD  
Water Right Appurtenant to Lands: TBD

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the use of this leased storage water complies with the moratorium on new consumptive uses as outlined in Rental Pool Procedure 3.4. Failure to meet the conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

If the leased storage is diverted by a diversion outside the area regulated by Water District #1, the applicant, by signing this agreement agrees to report to the Watermaster of the water district containing the diversion, the daily amounts of leased storage diverted during the year. The Watermaster of that district, according to Rental Pool Procedure 4.3.108, must then report to the Water District #1 Watermaster the daily rental diverted by November 30<sup>th</sup>. Failure to report the daily rental diversion may result in the rental not being delivered in Water District #1's final rental delivery records.

*[Handwritten Signature]*

Lessor Signature

Date

*Manager*

Title, Canal Company

*[Handwritten Signature]*

Lessee Signature

*5/5/23*

Date

*BBWD*

Canal Company or Diversion Name

=====

(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_

## STORAGE WATER LEASE

This Storage Water Lease ("Lease") is entered into between Enterprize Canal Co., whose mailing address is PO BOX 583, Ririe, ID 83443, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

### RECITALS

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

### LEASE

1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
5. **Use of Leased Water.**
  - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1

and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

**6. Representations by Lessor.** Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

**7. Breach.** If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

**8. Assignment.** This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

**9. Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 Good Faith Negotiation. Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation.

9.2 Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation



by a mediator designated by mutual Lease of the parties. The mediation will be held in Bonneville County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement Lease entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

9.4 Governing Law, Jurisdiction, and Venue. This Lease will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Bonneville County is the proper venue.

9.5 Exclusive Procedures. The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.3 are pending.

**10. Notices.** All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

**ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:**

Lessor: Enterprize Canal Co.  
PO BOX 583  
Ririe, ID 83443

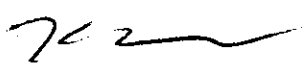
Lessee: Bonneville Jefferson Ground Water District  
PO Box 51121  
Idaho Falls, ID 83405

Either party may change its designated address by providing written notice of such change to the other party.

11. **Binding Effect.** This Lease shall be binding upon the respective heirs, successors, and assigns of the parties.

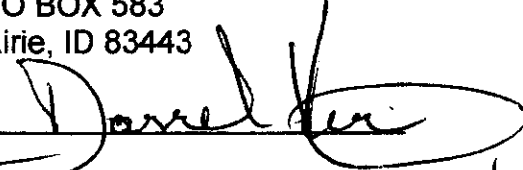
**LESSEE:**

Bonneville Jefferson Ground Water District  
PO Box 51121  
Idaho Falls, ID 83405

 4-21-23  
By: Kirt Schwieder  
Title: Treasurer Date

**LESSOR:**

Enterprize Canal Co.  
PO BOX 583  
Ririe, ID 83443

 4/20/23  
By: Darrel Kerr  
Title: Chairman Date

## **STORAGE WATER LEASE**

This Storage Water Lease ("Lease") is entered into between Idaho Irrigation District, whose address is 496 E 14th St, Idaho Falls, ID 83404, Idaho Falls, Idaho 83402 ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

### **RECITALS**

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
  
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
  
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

### **LEASE**

- 1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
  
- 2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
  
- 3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before ~~May 1~~ <sup>JULY 15</sup>, of 2023, and the final installment on or before November 1, of 2023.
  
- 4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
  
- 5. **Use of Leased Water.**
  - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1

and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

**6. Representations by Lessor.** Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

7. **Breach.** If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

8. **Assignment.** This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

9. **Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 **Good Faith Negotiation.** Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation.

9.2 **Mediation.** If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation

11. **Binding Effect.** This Lease shall be binding upon the respective heirs, successors, and assigns of the parties.

**LESSEE:**

Bonneville Jefferson Ground Water District  
PO Box 51121  
Idaho Falls, ID 83405



4-21-23

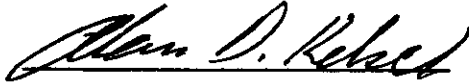
By: Kirt Schwieder

Title: Treasurer

Date

**LESSOR:**

Idaho Irrigation District  
496 E 14th St.  
Idaho Falls, ID 83404



4-18-2023

By: Alan Keisch

Date

Title: Chairman – Idaho Irrigation District

## **STORAGE WATER LEASE**

This Storage Water Lease ("Lease") is entered into between Snake River Valley Irrigation District, whose address is 816 N. 700 E., with a mailing address at PO BOX 70, Basalt, ID 83218, ("Lessor"), and the Bonneville Jefferson Ground Water District whose mailing address is P.O. Box 51121, Idaho Falls, Idaho 83204.

### **RECITALS**

- A. Lessor has the right to use, lease, and assign storage water allocated and available to Lessor as a space holder in the Idaho Water District 1 reservoir system pursuant to Lessor's Storage Water Contracts with the United States Bureau of Reclamation ("Reclamation").
- B. BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water to satisfy mitigation obligations determined by the Director of the Idaho Department of Water Resources ("Department") and related purposes, such as aquifer recharge and converting farmland from ground to surface water irrigation.
- C. Lessor desires to lease storage water to BONNEVILLE JEFFERSON GROUND WATER DISTRICT, and BONNEVILLE JEFFERSON GROUND WATER DISTRICT desires to lease storage water from Lessor, pursuant to the terms of this Lease.

### **LEASE**

- 1. **Storage Water Lease.** Lessor hereby leases to Bonneville Jefferson Ground Water District 4,000 acre feet of storage water for 2023 only, at which the Bonneville Jefferson Ground Water District is required to pay rent at a rate of \$ [REDACTED]
- 2. **Term.** The initial term of this Lease shall be for a period of one (1) year, commencing January 1, 2023, and ending December 31, 2023.
- 3. **Payment of Rent.** Bonneville Jefferson Ground Water District will pay the rent to Lessor in two equal installments. The first installment on or before May 1, of 2023, and the final installment on or before November 1, of 2023.
- 4. **Administrative Fees.** BONNEVILLE JEFFERSON GROUND WATER DISTRICT will pay all administrative fees imposed by Water District 1 and the Idaho Water Resource Board.
- 5. **Use of Leased Water.**
  - 5.1 The assignment, delivery, and use of leased storage water will be determined by BONNEVILLE JEFFERSON GROUND WATER DISTRICT and is subject to the final accounting for the year by the Watermaster of Water District 1 and any applicable Water District 1 Rental Pool Rules.

5.2 This Lease does not include any right to use storage water below Milner Dam.

5.3 The storage water available to Bonneville Jefferson Ground Water District under this Lease may be assigned and delivered by Bonneville Jefferson Ground Water District to any of its members or to any other person or entity for the authorized uses of recharge, mitigation, irrigation, or other lawful use at any time up to December 1 each year.

5.4 Any storage water not used or assigned by Bonneville Jefferson Ground Water District by December 1 shall remain in Lessor's Water District 1 storage account and then belong only to Lessor.

5.5 Lessor understands that any storage water leased may be subject to the Water District 1 Rental Pool Rules.

**6. Representations by Lessor.** Lessor covenants and represents that:

6.1 It will provide to Bonneville Jefferson Ground Water District all storage water leased under this Lease.

6.2 It is the true and lawful owner of the storage water and that nothing restricts or precludes Lessor from entering into this Lease.

**7. Breach.** If either party defaults in the performance of its obligations under this Lease, and such default is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at its option, may elect to pursue remedies for breach of contract in district court.

**8. Assignment.** This Lease may not be assigned by Bonneville Jefferson Ground Water District without the express written consent of Lessor, but the storage water leased by Bonneville Jefferson Ground Water District under this Lease may be assigned or otherwise made available to any other person or entity.

**9. Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions.

9.1 **Good Faith Negotiation.** Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation.

9.2 **Mediation.** If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation

by a mediator designated by mutual Lease of the parties. The mediation will be held in Bonneville County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.

9.3 Litigation. Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement Lease entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

9.4 Governing Law, Jurisdiction, and Venue. This Lease will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Bonneville County is the proper venue.

9.5 Exclusive Procedures. The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.3 are pending.

**10. Notices.** All notices given pursuant to this Lease must be in writing and shall be sent in one of the following manners: (a) by certified mail, return receipt requested, postage prepaid; (b) by recognized overnight courier such as Federal Express; (c) by facsimile transmission; (d) by email if the receiving party acknowledges receipt of the emailed notice. Notices shall be deemed received on the earlier of actual receipt, three days after mailing for certified mail and regular mail, the next business day if given by fax, or the date the receiving party acknowledges receipt of email notice.

**ADDRESSES TO BE USED FOR NOTICES AND DELIVERY OF LEASE PAYMENTS SHALL BE AS FOLLOWS:**

Lessor: Snake River Valley  
Irrigation District  
816 N. 700 E.  
PO Box 70  
Basalt, ID 83218

Lessee. Bonneville Jefferson Ground Water District:  
PO Box 51121  
Idaho Falls, ID 83405

Either party may change its designated address by providing written notice of such change to the other party.



successors, and assigns of the parties.

**LESSEE:**

Bonneville Jefferson Ground Water District  
PO Box 51121  
Idaho Falls, ID 83405

  
\_\_\_\_\_

4-21-23

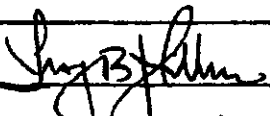
By: Kirt Schwieder

Title: Treasurer

Date

**LESSOR:**

Snake River Valley  
Irrigation District  
816 N. 700 E.  
PO Box 70  
Basalt, ID 83218

By:   
\_\_\_\_\_  
Title: President

4-20-23

Date

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

  
Thomas J. Budge

Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	<a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@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>
John K. Simpson Travis L. Thompson MARTEN LAW P. O. Box 63 Twin Falls, ID 83303-0063	<a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a> <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a> <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a>
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	<a href="mailto:wkf@pmt.org">wkf@pmt.org</a>
Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706	<a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a>
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	<a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a>
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234	<a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a>

<p>Sarah A Klahn Somach Simmons &amp; Dunn 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205</p>	<p><a href="mailto:rdiehl@pocatello.us">rdiehl@pocatello.us</a></p>
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p><a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a></p>
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*Attorneys for Bonneville-Jefferson Ground Water District*

**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**BONNEVILLE-JEFFERSON  
GROUND WATER DISTRICT'S  
STATEMENT OF ISSUES**

The Bonneville-Jefferson Ground Water District (hereafter “Bonneville-Jefferson”), acting for and on behalf of its respective members, through counsel, submits this *Statement of Issues* pursuant to the Director’s May 2, 2023, *Scheduling Order and Order Authorizing Remote Appearance at Hearing*.

As a threshold matter, Bonneville-Jefferson notes that the Orders at issue in this matter were issued a mere three weeks ago on April 21, 2023. Bonneville-Jefferson was not provided notice or an opportunity to be heard prior to these Orders being issued, nor has it been provided

any of the information the Department relied upon in issuing these Orders as of the date of this filing.

During the preliminary hearing before the Department on April 28, 2023, counsel for Bonneville-Jefferson joined in support of the Coalition of Cities' *Motion to Continue* the June 6, 2023, hearing on the Orders, raising concerns that it would not have sufficient time to obtain and review relevant information with its experts. This will impair Bonneville-Jefferson's ability to adequately review relevant information and develop evidence opposing the Orders before the scheduled hearing date. These concerns still abound, and Bonneville-Jefferson maintains that it will be deprived of due process and will not be able to address all issues raised by the Fifth Methodology Order should the Director not continue the hearing.

Without waiving any objection or defense, Bonneville-Jefferson submits the following *Statement of Issues* without the benefit of discovery, including the ability to review information the Department reconduct depositions, and with a limited information:

- 1) The procedures and process used by the Department in issuing the Methodology Order.
- 2) The technical rational for the Methodology Order.
- 3) The policy behind changing to transient state modeling in the Methodology Order.
- 4) The analysis and factual basis for the Methodology Order.
- 5) The Department's new reliance on transient modeling.
- 6) The Department's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years.
- 7) The Department's failure to consider changes in the efficiency of the SWC's operations.
- 8) The Department's failure to consider all sources of supply available to the SWC

- 9) The Department's rational and factual basis for using 2018 as the new baseline year.
- 10) Issues pertaining to futile call, including waste, reasonable time, and efficiency.
- 11) Whether the Methodology Order results in the optimum development of water resources in the public interest.
- 12) Whether the Methodology Order is contrary to the State's interest in securing the maximum use and benefit, and least wasteful use, of its water resources
- 13) Whether the Methodology Order permits SWC to command the entirety of large volumes of water in a surface or ground water source to support its appropriation contrary to the public policy of reasonable use of water as described in the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.
- 14) Whether the Department provided due process to water users in issuing the Methodology Order.
- 15) Bonneville-Jefferson reserves the right to present evidence, argument, and rebuttal as to any issues presented by other parties in this matter.
- 16) Bonneville-Jefferson further reserves the right to contest additional issues regarding the Fifth Methodology Order and the As-Applied Order that may be revealed through the discovery process.

Respectfully submitted this the 5<sup>th</sup> day of May 2023.

DATED: May 5, 2023

OLSEN TAGGART PLLC

/s/ Skyler C. Johns

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## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May 2023, I served the foregoing document on the persons below via email as indicated:

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**BINGHAM GROUND WATER  
DISTRICT'S REQUEST FOR  
HEARING**

The Bingham Ground Water District (hereafter "Bingham"), acting for and on behalf of its respective members, through counsel, submits this Request for Hearing pursuant to Idaho Code § 42-1701(A)(3), Idaho Code § 67-5246(4), and Rule 740.02.b. of the Rules of Procedure of the Idaho Department of Water Resources, requesting a hearing on the Department's *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Fifth Methodology Order")

and *Final Order Regarding April 2023 Forecast Supply* (“April 2023 As-Applied Order”) issued April 21, 2023.

Bingham is in the process of reviewing the Fifth Methodology Order and the April 2023 As-Applied Order, but plans to address the issues identified in the *Coalitions of Cities’ Amended Request for Hearing*, *Pocatello’s Request for Hearing* filed April 28, 2023, and *Bonneville-Jefferson Ground Water District’s Request for Hearing* filed May 4, 2023. Bingham reserves the right to present additional issues that may be revealed through the discovery process. Bingham reserves the right to identify additional ground for contesting the Director’s action once it completes a thorough review of the Fifth Methodology Order and the As- Applied Order.

Respectfully submitted this the 5<sup>th</sup> day of May 2023.

DATED: May 5, 2023

DYLAN ANDERSON LAW PLLC

/s/  
Dylan Anderson

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of May, 2023, a true and correct copy of the foregoing document was served via email to the following:

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**EXHIBIT A-27**

*Attorneys for the City of Idaho Falls*

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

**CITY OF IDAHO FALLS  
 STATEMENT OF ISSUES**

The City of Idaho Falls (“Idaho Falls” or “City”), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., submits this *City of Idaho Falls Statement of Issues*.

On April 21, 2023, the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) issued a *Fifth Amended Methodology Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover* (the “Methodology Order”) and a *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”). Idaho Falls timely filed a *Challenge and Request for Hearing* on May 4, 2023. Pursuant to the Director’s May 2, 2023, *Scheduling Order and Order Authorizing Remote Appearance at Hearing*, Idaho Falls files its statement of issues in the above captioned matter.

Based on what is known now, and without the benefit of discovery, including the ability to conduct depositions, counsel for Idaho Falls identifies the following issues for the hearing:

1. Whether IDWR's new reliance on transient modeling as opposed to steady-state modeling are reasonable;
2. Whether the Eastern Snake Plain Aquifer Model has been shown to be sufficiently accurate to support the proposed transient groundwater modeling to determine curtailment dates;
3. Whether a baseline demand that incorporates increases in SWC member diversions in recent years is a valid basis for conjunctive administration;
4. The reasonableness of Project efficiencies of the SWC members, trends in the efficiencies in recent years, and how the efficiency values are used in determining reasonable in-season demands;
5. Whether IDWR failed to consider all sources of water supply to the SWC;
6. Whether 2018 is a reasonable new baseline year;
7. Whether changes to determination of the reasonable in-season demand for the SWC members are reasonable and appropriate;
8. Whether IDWR's failure to fully evaluate potential changes to the methodology used to determine the crop water needs of the SWC members is reasonable;
9. Whether IDWR's failure to fully evaluate potential changes to the methodology for forecasting the irrigation supplies of the SWC members is reasonable;
10. Whether IDWR's failure to fully evaluate changes to the methodology for determining reasonable carryover for the SWC members is reasonable;

11. Whether IDWR's failure to fully evaluate changes to the timing and procedures for updating the forecast shortages to the SWC members after the initial determination in April is reasonable;
12. Whether IDWR's failure to investigate whether the SWC members are using the water they divert efficiently and without waste, and in compliance with the terms of their decreed water rights;
13. Whether it was lawful and/or appropriate for IDWR to fail to apply all factors in the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11, including but not limited to CM Rule 20.03 and principles of reasonableness generally; and
14. IDWR's violation of due process rights of all interested water users:
  - a. by engaging in an ineffective public process related to the Department's convening of the "Technical Work Group" to discuss modifications to the Fourth Methodology Order; and
  - b. by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives, and consultants.

The above is based upon Idaho Falls' current understanding issues involved in this proceeding, but without the benefit of discovery and other due process. Additional issues may be identified as this matter develops.

Dated this 5<sup>th</sup> day of May, 2023.

/s/ Robert L. Harris  
Robert L. Harris, Esq.  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.



**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of May, 2023, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

**DOCUMENT SERVED: CITY OF IDAHO FALLS STATEMENT OF ISSUES**

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<p>Corey Skinner  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:Corey.skinner@idwr.idaho.gov">Corey.skinner@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> Email</p>
<p>William A. Parsons  Parsons Smith &amp; Stone  P O Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>	<p><input type="checkbox"/> Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> Email</p>
<p>Garrick Baxter  Deputy Attorney General  Idaho Department of Water Resources  P O Box 83720  Boise, ID 83720-0098  <a href="mailto:Garrick.baxter@idwr.idaho.gov">Garrick.baxter@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> Email</p>

/s/ Robert L. Harris  
Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

**EXHIBIT A-28**

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
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W. Kent Fletcher, ISB #2248  
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*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-DC-2010-001

**SURFACE WATER COALITION'S  
REQUEST FOR HEARING AND  
STATEMENT OF ISSUES**

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 (“Surface Water Coalition” or “Coalition”), by and through  
counsel of record, and hereby request a hearing in the above-referenced matter pursuant to I.C. §  
42-1701A(3) and submit the following list of issues regarding the Director’s *Fifth Amended*

*Order Regarding Methodology et al.* and the *Final Order Regarding April 2023 Forecast Supply* issued on April 21, 2023.

**I. *Fifth Methodology Order***

The Coalition requests a hearing on the following issues:

- 1) Whether 2018 is the proper baseline year for each Coalition member pursuant to the criteria identified in the methodology order;
- 2) Whether the reasonable carryover amounts identified for each Coalition member are proper pursuant to the criteria identified in the methodology order;
- 3) Whether current year project efficiency is recalculated for each year after Cropland Data Layer (CDL) data for this year becomes available and prior to this current year's project efficiency being used in the 15-year rolling average;
- 4) Whether current year project efficiency is recalculated for each year after CDL updates become available and are included in the 15-year rolling average; and
- 5) Whether the Coalition members can receive assigned mitigation storage water if they do not participate in the Water District 01 rental pool.

**II. *April As Applied Order***

The Coalition requests a hearing on the following issue:

- 1) Whether the order provides that IGWA has an option to comply with the mitigation plan approved in CM-MP-2016-001 to avoid curtailment by complying with the mitigation plan approved in CM-MP-2009-007 instead;

A&B Irrigation District requests a hearing on the following issues:


- 1) Whether the order's identified proportionate share (458 acre-feet) of the predicted injury (75,200 acre-feet) to TFCC is calculated correctly based upon A&B's actual diversion

and use of water rights that are subject to the identified curtailment date (junior to December 30, 1953); and

- 2) Whether the steady-state use of the ESPAM 2.2 in identifying A&B's proportionate share is consistent with the transient use of the model in identifying ground water rights subject to curtailment as outlined in the *Fifth Methodology Order*.

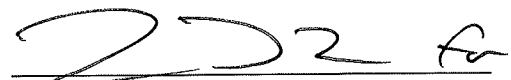
DATED this 5<sup>th</sup> day of May, 2023.

**MARTEN LAW LLP**

  
Travis L. Thompson

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

**FLETCHER LAW OFFICE**

  
W. Kent Fletcher

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served a true and correct copy of the foregoing on the following by the method indicated:

<p>Director Gary Spackman Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail</p> <p><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@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</p> <p><a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only</p> <p><a href="mailto:Tony.olenichak@idwr.idaho.gov">Tony.olenichak@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</p> <p><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 Somach Simmons &amp; Dunn 2033 11<sup>th</sup> St., Ste. 5 Boulder, CO 80302 *** service by electronic mail only</p> <p><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only</p> <p><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</p> <p><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</p> <p><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</p> <p><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</p> <p><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</p> <p><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 4<sup>th</sup> Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only</p> <p><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</p> <p><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</p> <p><a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only</p> <p><a href="mailto:rfife@idahofallsidaho.gov">rfife@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</p> <p><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</p> <p><a href="mailto:dylan@dylanandersonlaw.com">dylan@dylanandersonlaw.com</a></p>	

---

Jessica Nielsen  
*Assistant for Travis L. Thompson*



**EXHIBIT A-29**

John K. Simpson, ISB #4242  
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101 S. Capitol Blvd., Suite 305  
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*Attorneys for Falls Irrigation District*

**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-DC-2010-001

**FALLS IRRIGATION DISTRICT'S  
NOTICE OF COMMUNICATION TO  
WATER DISTRICT 01  
WATERMASTER**

COMES NOW, Falls Irrigation District (“Falls” or “District”), by and through counsel of record, and hereby provides notice of its communication to the Water District 01 Watermaster regarding compliance with the Director’s *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* wherein the Director required affected junior ground water right holders to establish “that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan” on or before May 5, 2023. *See* April As Applied Order at 6. Counsel mailed and emailed the letter to Watermaster Tony Olenichak on May 5, 2023. *See* Ex. A.

Notwithstanding this notice Falls reserves all rights with respect to the calculated proportionate share of the predicted injury and reserves the right to participate in the hearing on the April As Applied Order on that issue set for June 6-10, 2023.

Dated this 5<sup>th</sup> day of May, 2023.

**MARTEN LAW LLP**

/s/ John K. Simpson  
John K. Simpson

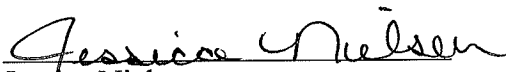
*Attorneys for Falls Irrigation District*

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served a true and correct copy of the foregoing on the following by the method indicated:

<p>Director Gary Spackman Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail</p> <p><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@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</p> <p><a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only</p> <p><a href="mailto:Tony.olenichak@idwr.idaho.gov">Tony.olenichak@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</p> <p><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 Somach Simmons &amp; Dunn 2033 11<sup>th</sup> St., Ste. 5 Boulder, CO 80302 *** service by electronic mail only</p> <p><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a> <a href="mailto:dthompson@somachlaw.com">dthompson@somachlaw.com</a></p>	<p>David Gehlert ENRD – DOJ 999 18<sup>th</sup> St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only</p> <p><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</p> <p><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</p> <p><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</p> <p><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</p> <p><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</p> <p><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 4<sup>th</sup> Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only</p> <p><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</p> <p><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</p> <p><a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></p>	<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405 *** service by electronic mail only</p> <p><a href="mailto:rfife@idahofallsidaho.gov">rfife@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</p> <p><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</p> <p><a href="mailto:dylan@dylanandersonlaw.com">dylan@dylanandersonlaw.com</a></p>	

  
 Jessica Nielsen  
 Assistant for John K. Simpson

# Exhibit A



**MARTEN LAW**

May 5, 2023

**VIA U.S. MAIL AND EMAIL**

Tony Olenichak, Watermaster  
Water District 01  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718  
[Tony.olenickak@idwr.idaho.gov](mailto:Tony.olenickak@idwr.idaho.gov)

**Re: SWC Delivery Call / Notice of Mitigation Water (Final Order  
Regarding April 2023 Forecast Supply (Steps 1-3))**

Dear Tony:

I am writing on behalf of the Falls Irrigation District (“Falls” or “District”) in reference to the Director’s April 21, 2023 *Final Order Regarding April 2023 Forecast Supply* (“April Order”). In that order the Director noted that affected junior ground water right holders must establish “that they can mitigation for their proportionate share of the predicted demand shortfall of 75,200 acre-feet in accordance with an approved mitigation plan.” See April Order at 6. To Falls’ knowledge, the Director has not yet identified Falls’ proportionate share with respect to certain junior priority ground water rights held by Falls.

Falls is reserving the right to participate in the hearing on the Director’s calculation of its “proportionate share” of the April forecasted injury and that matter is set to be heard June 6-10, 2023. Falls reserves all rights with respect to this issue and by communicating this notice does not waive any of those rights with respect to the Director’s order. Whether the District’s proportionate share will change is unknown at this time.

Notwithstanding, Falls hereby provides notice of available mitigation water and requests that you confirm to the Director that the proportionate share of Falls’ 2023 storage allocation will be available for assignment and delivery to mitigate injury to TFCC as predicted in the April Order if necessary. As you may be aware Falls carried over 13,722 acre-feet in its Palisades Reservoir space from 2022, and its American Falls Reservoir space is currently filling in 2023.

Regardless of the final allocation, it is believed that Falls has sufficient storage to deliver to injured Coalition members, including TFCC, for mitigation purposes if required.



**MARTEN LAW**

Falls believes this letter satisfies the Director's April Order. If you have any questions please call me at (208) 336-0700.

Sincerely,

*/s/ John Simpson*

John Simpson  
Partner

Direct: (208) 999-5903  
Email: [jsimpson@martenlaw.com](mailto:jsimpson@martenlaw.com)

cc: Sean Tischendorf, Falls Irrigation District

Travis L. Thompson, ISB #6168  
**MARTEN LAW LLP**  
163 Second Ave. West  
P.O. Box 63  
Twin Falls, Idaho 83303-0063  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444  
Email: [tthompson@martenlaw.com](mailto:tthompson@martenlaw.com)

**EXHIBIT A-30**

*Attorneys for A&B Irrigation District*

**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-DC-2010-001

Docket No. CM-MP-2015-003

**A&B IRRIGATION DISTRICT'S  
NOTICE OF COMMUNICATION TO  
WATER DISTRICT 01  
WATERMASTER**

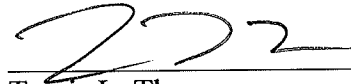
COMES NOW, A&B Irrigation District (“A&B” or “District”), by and through counsel of record, and hereby provides notice of its communication to the Water District 01 Watermaster regarding compliance with the Director’s *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* wherein the Director required affected junior ground water right holders to establish “that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan” on or before May 5, 2023. *See* April As Applied Order at 6. Counsel mailed and emailed the letter to Watermaster Tony Olenichak on May 5, 2023. *See* Ex. A.



Notwithstanding this notice A&B reserves all rights with respect to the calculated proportionate share of the predicted injury, i.e. 458 acre-feet, and has requested a hearing on that issue.

Dated this 5<sup>th</sup> day of May, 2023.

**MARTEN LAW LLP**



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Travis L. Thompson

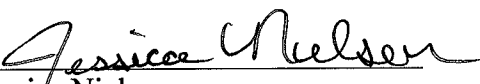
*Attorneys for A&B Irrigation District*

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served a true and correct copy of the foregoing on the following by the method indicated:

<p>Director Gary Spackman Garrick Baxter Sarah Tschohl State of Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail</p> <p><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@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</p> <p><a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a></p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only</p> <p><a href="mailto:tony.olenichak@idwr.idaho.gov">tony.olenichak@idwr.idaho.gov</a></p>
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 Jessica Nielsen  
 Assistant for Travis L. Thompson

# Exhibit

# A



**MARTEN LAW**

May 5, 2023

**VIA U.S. MAIL AND EMAIL**

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**Re: SWC Delivery Call / Notice of Mitigation Water (*Final Order Regarding April 2023 Forecast Supply (Steps 1-3)*)**

Dear Tony:

I am writing on behalf of the A&B Irrigation District (“A&B” or “District”) in reference to the Director’s April 21, 2023 *Final Order Regarding April 2023 Forecast Supply* (“April Order”). In that order the Director noted that affected junior ground water right holders must establish “that they can mitigation for their proportionate share of the predicted demand shortfall of 75,200 acre-feet in accordance with an approved mitigation plan.” See April Order at 6. The Director identified A&B’s proportionate share as 458 acre-feet with respect to certain junior priority ground water rights held by A&B (36-15127A et al.). See *id.* at 5, n. 5. A&B also has an approved mitigation plan. See *Final Order Approving Mitigation Plan*, CM-MP-2015-003, Dec. 16, 2015.

A&B is requesting a hearing on the Director’s calculation of its “proportionate share” of the April forecasted injury and that matter is set to be heard June 6-10, 2023. A&B reserves all rights with respect to this issue and by communicating this notice does not waive any of those rights with respect to the Director’s order. Whether the District’s proportionate share will change is unknown at this time.

Notwithstanding, A&B hereby provides notice of available mitigation water and requests that you confirm to the Director that 458 acre-feet of A&B’s 2023 storage allocation will be available for assignment and delivery to mitigate injury to TFCC as predicted in the April Order if necessary. As you may be aware A&B carried over 58,900 acre-feet in its Palisades Reservoir space from 2022, and its American Falls Reservoir space is currently filling in 2023.



## MARTEN LAW

Regardless of the final allocation, A&B presently has 458 acre-feet to deliver to injured Coalition members, including TFCC, for mitigation purposes if required.

A&B believes this letter satisfies the Director's April Order. If you have any questions please call me at (208) 733-0700.

Sincerely,

Travis Thompson  
Partner

Direct: (208) 735-2227  
Email: [tthompson@martenlaw.com](mailto:tthompson@martenlaw.com)

cc: Justin Temple, A&B Irrigation District

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**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-DC-2010-001

**MOTION FOR  
RECONSIDERATION OF DENIAL  
OF CONTINUANCE**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”), by and through their attorneys of record, Candice M. McHugh and Chris M. Bromley, the City of Idaho Falls, by and through its attorney of record, Robert L. Harris, and the City of Pocatello by and through its attorney of record Sarah A. Klahn (collectively the “Cities”), Idaho Ground Water Appropriators (“IGWA”) by and through its attorney of record Thomas

J. Budge, Bingham Ground Water District by and through its attorney, Dylan Anderson and Bonneville-Jefferson Ground Water District, by and through its attorney Skyler Jones, (collectively the “Parties”) pursuant to IDAPA 37.01.01.711 of the Department’s rules of procedure and hereby file this *Motion for Reconsideration of the Denial of the Continuance* (“Motion”) and move for reconsideration of the Director’s interlocutory order denying a continuance of the hearing scheduled for June 6-10, 2023, in the above-captioned matter. Additional reasons for a continuance have come to light since the pre-hearing conference in addition to the reasons already set forth in the original motion.

On April 21, 2023, the Director issued a series of orders regarding the Surface Water Coalition (“SWC”) delivery call: *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”); *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”), (collectively the “2023 Orders”). On April 28, 2023, the Director held a pre-hearing conference on the 2023 Orders. The Cities filed a *Motion for Continuance* which was joined by IGWA, GWDs and McCain. The Director orally denied the *Motion for Continuance*. But, he also left the door slightly open by saying: “if ... water users as a whole, whose priority dates are junior to the senior water right holders, are either complying with a mitigation plan or have arranged somehow with the senior water right holders to satisfy the obligation, I’m willing to listen to some reasonable requests for delay.” Tr. 24: 21- 25: 1.3. Because there is enough water secured to provide the predicted shortage, a reasonable delay is warranted as discussed below.

### **ARGUMENT**

IDWR’s procedural rule 711 allows any party affected by an “interlocutory order” to



petition the presiding officer and ask him to “rescind, alter or amend” such order. After further review of the 2023 Orders, the data and documents provided thus far and after consultation with the Cities and Groundwater Users’ clients and experts it is apparent that a continuance is necessary because the expert for the City, Greg Sullivan, is unavailable in the weeks leading up to the hearing and IGWA’s two experts are also unavailable to attend the hearing and there is not sufficient time to review and respond to the orders and their underlying data and information, take depositions of key Department personnel or witnesses. (See Declarations of Greg Sullivan, Jaxon Higgs, Sophia Sigstedt, Bryce Contor, and Thane Kindred.) Furthermore, IGWA, the Cities and Groundwater users are providing sufficient mitigation this upcoming season so little to no injury will occur to the senior users.

This Motion is supported by the argument below and Declarations filed by the Parties from: Greg Sullivan, Candice McHugh, Jaxon Higgs, Sophia Sigstedt, Bryce Contor and Thane Kindred.

The Parties to this Motion request that the Director reconsider his order denying the continuance and alter and amend the existing hearing date and schedule for the reasons set forth below.

**A. Unavailability of Key Witnesses for Cities and Ground Water Users**

- 1) The long-standing Cities’ expert, Greg Sullivan, will be out of the country between May 17 and June 2, 4 days before the scheduled hearing. These dates include the date when expert reports are due, which means Mr. Sullivan will have to prepare his report in the middle of discovery and will have no opportunity to review other expert reports until he returns. The Declaration of Greg Sullivan

filed herewith contains further details as to why a continuance is necessary and are incorporated herein. Mr. Sullivan's absence will prejudice the Cities ability to adequately prepare for hearing.

- 2) Ms. McHugh will be out of town during the week of the hearing and this compromises her ability to adequately represent her clients causing them prejudice. (Declaration of Candice McHugh)
- 3) Sophia Sigstedt has been a long-standing expert for the Idaho Ground Water Appropriators and participated in the SWC Technical Working Group. She is IGWA's modelling expert with expertise in surface and ground water interactions, hydrogeology, consumptive use analysis among others. As detailed her in Declaration filed in support of this Motion, she is not able to "perform all of the work required to properly analyze" the orders in this case. Declaration of Sophia Sigstedt at 5. Furthermore, and most significantly, Ms. Sigstedt is not available for the hearing as schedule because of medical reasons. Id. Ms. Sigstedt's testimony and expertise is material to the development of the record and issues raised by IGWA. IGWA will be severely prejudiced if she is not able to attend the hearing.
- 4) Jaxon Higgs is an expert for the IGWA as a Geologist and Hydrologist and has expertise with issues relevant to this matter including groundwater modelling, the technical working group that was a pre-cursor to the orders in this matter, and water measurement, aquifer recharge and management to name a few. Mr. Higgs is unavailable the week of the hearing, due to an out of country trip already scheduled. Declaration of Jason Higgs. Mr. Higgs' testimony is material to the

development of the record and issues raised by IGWA. IGWA having to hire a different expert to present the testimony is not possible at this late date and replacing his expertise will require significant additional expense for another expert which is not necessary. IGWA will be severely prejudiced if he is not able to attend the hearing.

The availability of these people before and/or during the hearing will cause prejudice to their respective client's real property interests and rights to due process.

**B. Insufficient time to obtain, review, and develop evidence and legal argument for Bonneville- Jefferson's experts and legal counsel.**

The scheduled hearing date does not provide adequate time for Bonneville-Jefferson's experts to obtain, review, and develop testimony regarding the relevant information in this matter. Bonneville-Jefferson has retained Bryce Contor and Thane Kindred from Rocky Mountain Environmental Associates, Inc., in Idaho Falls, Idaho, to review the technical information pertaining to the Fifth Amended Methodology Order and April 2023 As-Applied Order. Their expertise is critical to Bonneville-Jefferson's opposition to these orders because Bonneville-Jefferson and its retained experts were not involved in the Department meetings or discussions regarding the technical basis for either Order. See Declaration of Skyler C. Johns, Declaration of Bryce Contor, and Declaration of Thane Kindred. Thus, Bonneville-Jefferson and its experts have not received, nor do they have access to any information the Department relied upon in these orders as of the date of this filing. *Id.* Once all discovery is complete, Bryce Contor and Thane Kindred require at least two months to adequately review the information and prepare their testimony regarding the technical basis of the Orders.

Counsel for Bonneville-Jefferson also cannot adequately develop evidence or legal arguments in opposition to the Orders until Bryce and Thane complete their review. Id. As such, counsel will require an additional one to two months to consult with Bonneville-Jefferson's experts once they have completed their review of all the relevant information. See Declaration of Skyler C. Johns.

Based on the foregoing, not granting additional time for Bonneville-Jefferson to obtain review and evidence and legal arguments will cause prejudice to its members real property interests and rights to due process.

**C. Mitigation Has Been Secured for the Upcoming Season, Thereby Causing Little to No Prejudice to the Senior Users**

- 1) At the Pre-Hearing conference, the Director denied the continuance but left the door open, "if ... water users as a whole, whose priority dates are junior to the senior water right holders, are either complying with a mitigation plan or have arranged somehow with the senior water right holders to satisfy the obligation, I'm willing to listen to some reasonable requests for delay." Tr. 24: 21- 25: 1.3.
- 2) IGWA has enough the water to mitigate for its 2021 breach and for the predicted demand shortfall for the upcoming 2023 season. See IGWA's Notice of Mitigation.
- 3) The Cities are in compliance with their mitigation obligations and will meet their obligations this year.
- 4) At least two other junior groundwater users, McCain Foods USA, Inc. ("McCain") and Amalgamated Sugar Company ("Amalgamated") are also mitigated for their use. See McCain Notice of Mitigation and Amalgamated's Notice of Mitigation.

- 5) It is also understood that IDWR is issuing curtailment letters to the remaining, non-mitigated juniors. These other remaining junior users account a fractional percentage of the groundwater depletions which are allegedly causing injury to Twin Falls Canal Company. It is anticipated that some of these users will also provide mitigation, but given the tiny amount of water they are responsible for, the fact that IGWA has enough water for this season to offset the entire injury forecasted to TFCC and the fact that the Cities' have over-mitigated in the past several years, the Director should consider that the junior water users "as a whole" are complying with mitigation plans. Thus, a reasonable continuance is in order.
- 6) This leaves the final piece—that the Director effectively delegated to the SWC the ability to veto a continuance to a reasonable hearing date. Tr: 24:21-25: 1. 3. The Parites are unaware of any statutory authority for this action, and in fact it appears the Director is attempting to set a hearing that will end up with a per se inadequate record for appeal.

In addition, because mitigation water has been secured and the Director has a final Fourth Methodology order administration can occur this year. And, while the Parties to this motion prefer to wait for implementation of the 2023 Orders, they will not object to the Director implementing the 2023 Orders and pursuing curtailment of non-mitigated groundwater users this season.

**D. Experts and Counsel Involved Here Are Available For A Hearing in This Matter the Week of October 16, 2023 And the Moratorium Hearing Could be Rescheduled**

Over a dozen attorneys and/or experts for the key parties in this matter and twenty-four parties are the same as those in *The Matter of the Big Wood River Ground Water Management Area and In The Matter of Applications for Permit for the Diversion and Sue of Surface and Grud Water Within the Snake Rier Basin* (the “Moratorium Matters”). There is a hearing set for October 16-19, 2023 at the Department in Moratorium Matters. The overlapping parties, counsel and experts in the Moratorium Matters and this action are: 14 cities in the Coalition of Cities and their attorneys Candice McHugh, Chris Bromley, the City of Pocatello and its attorney Sarah Klahn and the City of Idaho Falls and its attorney Rob Harris along with their collective expert Greg Sullivan; Idaho Ground Water Appropriators and its nine groundwater districts and its attorneys Thomas J. Budge, Elisheva Patterson, and its experts Sophia Sigstedt and Jaxon Higgs; Kent Fletcher, Travis Thompson and John Simpson.

The City of Bellevue, the City of Pocatello, the Coalition of Cities, Wellsprings Group and IGWA all agree to move the hearing in this matter to the days set for hearing in the Moratorium Matters. And, because Mr. Fletcher, Mr. Thompson and Mr. Simpson represent parties in the Moratorium Matters that are all in support of the Moratoriums, which is in place, moving that hearing will not prejudice their clients.

Moving this hearing to the proposed October dates or some other week in this coming fall or early winter is a reasonable delay given the detail and evidence needed in this case. Because the key players are all available for the dates set forth in October, this seems like the easiest and fairest resolution, but regardless, delaying the hearing to dates this fall

allows a full and fair development of the record by all parties and it will allow the Director time to issue an order prior to having to determine carry-over storage issues in November and in time for the upcoming 2024 irrigation season.

**E. Rescheduling the Hearing Saves All Parties and IDWR Time, Money and Expense and Honors the Civility and Professional Conduct of the Legal Profession**

Without moving the hearing, the parties to this Motion will be forced to take action in District Court requiring IDWR and the other parties to the case to respond. It is a much more reasonable and prudent use of state resources as well as resources of the parties to reschedule this hearing later this fall, especially because there are dates available in October for all the necessary parties, the senior user's forecasted injury will be fully mitigated this season and without a delay the junior users are highly prejudiced.

**CONCLUSION**

Based on the foregoing, the Parties to this Motion request that the Director grant a continuance to the Moratorium Hearing Dates in October or to some other week this fall; the Parties to this motion and their experts are also available the weeks of November 27 or December 6, 2023.

In addition, the Parties to this Motion recognize that the Surface Water Coalition has a right to respond to this motion but given the compressed hearing schedule, the Parties request that the Director order them to respond by the end of business Tuesday, May 9, 2023 and issue an order on this Motion by Wednesday, May 10, 2023.

Submitted this 5th day of May, 2023.

/s/ Sarah Klahn

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*Attorneys for City of Pocatello*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of May, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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/s/ Candice McHugh

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**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-DC-2010-001**

**DECLARATION OF CANDICE M.  
MCHUGH**

I, Candice McHugh hereby declare and state as follows:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I am one of two owners of McHugh Bromley, PLLC, the law firm that represents the cities that make up the Coalition of Cities as their interests relate to the on-going Surface Water Coalition (“SWC”) Delivery Call and mitigation thereof. McHugh Bromley, PLLC also represents Amalgamated Sugar Company (“Amalgamated”) and McCain Foods USA, Inc. (“McCain”) in this matter.
3. McHugh Bromley, PLLC has two attorneys, Candice McHugh and Chris Bromley. We have one part-time file clerk who works 4-5 hours per week on clerical duties only.
4. I serve as the primary attorney for Amalgamated and McCain.

5. My partner, Chris Bromley, is the primary attorney for Sun Valley Company who is a party to the Supreme Court appeal in *South Valley Ground Water District and Galena Ground Water District v. Idaho Dep't of Water Resources*, Supreme Court Docket No. 49632-2022 ("Supreme Court Matter"). Oral argument in that matter is set for June 5, 2023 with Mr. Bromley set for argument. Mr. Bromley will be preparing for argument during the week of May 29, 2023.
6. I have a previously scheduled out of state obligation in Boone, North Carolina, to assist my son who is a freshman football athlete in college from June 4-8, 2023, wherein I will be travelling by air virtually all day June 4 and all day June 8, 2023.
7. Because our law firm only has two attorneys, requiring Mr. Bromley, alone to prepare for the Supreme Court argument while also having to do the bulk of the preparation for the SWC hearing on behalf of the Coalition of Cities, Amalgamated, and McCain at the same time and then represent our firm's clients in 4 days of hearing is not practical and does not allow us to fully and fairly represent Coalition of Cities, Amalgamated, and McCain.
8. After repeated requests to postpone the hearing to other dates by the junior users, IGWA, GWDs, McCain, Amalgamated, and the Cities, the Director denied their requests.
9. The hearing as currently set will not allow me to assist or attend the hearing in any meaningful manner and prejudices the interest of McHugh Bromley, PLLC's clients.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated this 5th, day of May, 2023.

MCHUGH BROMLEY, PLLC



---

Candice M. McHugh  
Attorney for the Coalition of Cities

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of May, 2023, the above and foregoing, was served by email to the following:

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/s/ Candice M. McHugh  
Candice M. McHugh

**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-DC-2010-001

**ORDER DENYING THE CITIES’  
MOTION FOR APPOINTMENT  
OF INDEPENDENT HEARING  
OFFICER AND MOTION FOR  
CONTINUANCE AND LIMITING  
SCOPE OF DEPOSITIONS**

**BACKGROUND**

On April 21, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Methodology Order”) as well as his *Final Order Regarding April 2023 Forecast Supply* (“As-Applied Order”). The Methodology Order revises the nine steps used to determine material injury to members of the Surface Water Coalition (“SWC”). The As-Applied Order predicts a shortfall for the 2023 irrigation season, which will result in mitigation requirements or curtailment for ground water rights with priority dates junior to December 30, 1953.

Anticipating that one or more parties would request a hearing pursuant to Idaho Code § 42-1701A(3) in response to one or both of the orders, the Director also issued a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* (“Notice of Hearing”) on April 21, 2023. The Notice of Hearing scheduled a prehearing conference for April 28, 2023, and an in-person evidentiary hearing on the Methodology Order and As-Applied Order for June 6–10, 2023.

Immediately before the April 28, 2023 prehearing conference, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell (collectively the “Cities”) filed a *Motion for Appointment of Independent Hearing Officer* (“Motion to Appoint”) requesting that the Director appoint an independent hearing officer to preside over the hearing set for June 6–10, 2023. The Cities also filed a *Motion for Continuance*, asking the Director to continue the evidentiary hearing “until a date in December or January 2024 . . . .” Mot. for Continuance at 8.

The prehearing conference was held on April 28, 2023. During the prehearing conference, the Cities presented argument in support of their *Motion for Continuance*. The Idaho Ground Water Appropriators, Inc. (“IGWA”), Bonneville-Jefferson Groundwater District, and McCain Foods orally moved to join the Cities’ *Motion for Continuance*. The SWC opposed the Cities’ motion, arguing the hearing should remain as scheduled on June 6–10, 2023. The Director orally denied the Cities’ request to delay the hearing until December or January 2024

ORDER DENYING THE APPOINTMENT OF AN INDEPENDENT HEARING OFFICER  
AND MOTION FOR CONTINUANCE AND LIMITING SCOPE OF DEPOSITIONS —Page 1

but left open the possibility of moving the hearing dates to another week in June. This order memorializes the Director’s oral ruling.

## ANALYSIS

### A. Motion for Continuance.

The Cities request that the hearing, currently scheduled for June 6–10, 2023, be delayed approximately six months. Mot. for Continuance at 8. The Cities assert additional time is needed to conduct discovery, prepare witnesses, properly evaluate the updated Methodology Order and As-Applied Order, and because one of its attorneys (Ms. Candice McHugh) will be unable to appear in person June 6–10. *Id.* at 4–6. The Cities further assert the Director should grant its request because no exigency exists given the above-average snowfall this year. *Id.* at 6–8.

During the April 28, 2023 prehearing conference, the Director orally denied the Cities’ request to move the hearing to December or January 2024 but offered limited flexibility regarding the June hearing dates. The Director stated he was willing to move the hearing anytime within the first three weeks of June 2023 if all the parties agreed to move the hearing. In response to the Cities’ claims of being surprised by the changes, the Director observed that last fall the Department conducted multiple presentations regarding possible amendments to the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fourth Methodology Order”). The Director also reminded the parties he had, multiple times, publicly expressed his intention to revisit the Fourth Methodology Order. In denying the Cities’ request, the Director emphasized his court-ordered obligation to timely predict water supplies and issue orders timely to ensure senior water right holders are protected. The Director reaffirms his denial of the Cities’ *Motion for Continuance* but remains willing to move the hearing within the first three weeks of June 2023 if the parties file a stipulated motion requesting a change.<sup>1</sup>

### B. Motion to Appoint an Independent Hearing Officer.

The Cities move the Director to appoint an independent hearing officer pursuant to Idaho Code § 42-1701A(2), which states in relevant part that “[t]he director, *in his discretion*, may direct that a hearing be conducted by a hearing officer appointed by the director.” (Emphasis added). Accordingly, the Director has the discretion to grant or deny the Cities’ request.

In support of the Motion, the Cities argue that “the only evidentiary hearing of any magnitude” in the SWC delivery call proceedings occurred in 2008 when former Idaho Supreme Court Chief Justice Gerald Schroeder was appointed to serve as a hearing officer. *Motion to Appoint* at 3–4. The Cities assert that the updated Methodology Order constitutes a “sea-change”

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<sup>1</sup> At the April 28, 2023 prehearing conference, Ms. McHugh asked that she be allowed to participate in the hearing remotely if the Director was going to keep the June hearing date. The Director granted Ms. McHugh’s request to appear at the hearing remotely in his *Scheduling Order and Order Authorizing Remote Appearance at Hearing* (issued May 2, 2023).



and that “the Methodology Order fails to update data as to SWC irrigation efficiencies, irrigation practices, irrigated area, among other topics that will need to be addressed at an evidentiary hearing with a fully developed record.” *Id.* at 4. The Cities argue that it has been 15 years since “an evidentiary hearing of any consequence has taken place,” and recommend that an independent hearing officer be appointed to hold this upcoming evidentiary hearing. *Id.* at 5. The Cities suggest the Department has established a “practice” of appointing an independent hearing officer in the SWC delivery call and encourages the Director to continue with this “practice.” *Id.*

The Director declines to grant the Cities’ request to appoint an independent hearing officer. The Director has held many evidentiary hearings related to conjunctive administration of water rights. For example, the Director held a multi-day evidentiary hearing in the Rangen delivery call matter. *See Rangen, Inc. v. Idaho Dep’t of Water Res.*, 159 Idaho 798, 801, 367 P.3d 193, 196 (2016) (“IDWR Director Gary Spackman (‘Director’) presided over an evidentiary hearing.”). The Director held a multi-day evidentiary hearing in the Basin 37 administrative matter. *See Final Order, In re Basin 37 Administrative Proceeding*, No. AA-WRA-2021-001 (Idaho Dep’t of Water Res. June 28, 2021) (The Director presided over evidentiary hearing held June 7–12, 2021).

The Director has held evidentiary hearings related to mitigation plans in the SWC delivery call matter. *See Am. Final Order Re. Compliance with Approved Mitigation Plan, In re IGWA’s Settlement Agreement Mitigation Plan*, No. CM-MP-2016-001 (Idaho Dep’t of Water Res. April 24, 2023). Significantly, the Director has held an evidentiary hearing on previous updates to the methodology order. *See Am. Final Order Re. Method. for Determ’g Material Injury to Reasonable In-Season Demand & Carryover.*

These examples are just a few of the many administrative hearings the Director has held. As these examples illustrate, there is no fixed practice of appointing a hearing officer in this or other contested administrative matters. The Director has presided over many evidentiary hearings related to significant water administration issues and is able to preside over the upcoming evidentiary hearing.

Furthermore, time is of the essence given that the As-Applied Order predicts a shortfall for the 2023 irrigation season resulting in mitigation requirements or curtailment for ground water rights junior to December 30, 1953. The urgency for water administration mandates a timely decision because “[w]hen a junior appropriator wrongfully takes water that a senior appropriator is entitled to use, there is often the need for very prompt action.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 815, 252 P.3d 71, 96 (2011); *see also IGWA v. Idaho Dep’t of Water Res.*, No. CV27-22-00945 (Jerome Cnty. Dist. Ct. Idaho).

The Director is thoroughly familiar with all aspects of the Methodology Order and the As-Applied Order and is the person in the best position to preside over this matter and consider the arguments raised by the parties. Appointing an independent hearing officer would unreasonably delay the proceedings and delay administration of hydraulically connected surface and ground water rights.

### C. Scope of Depositions of Department Employees

During the prehearing conference, the Director also identified Matthew Anders and Jennifer Sukow as the witnesses that will testify on behalf of the Department at the hearing to explain the facts and information the Department considered in updating the Methodology Order and As-Applied Order. Questions were raised regarding the appropriate scope of the depositions. As indicated at the prehearing, the deposition process is not an opportunity for parties to question Department employees about the Director's deliberative process related to legal and policy considerations. The Methodology Order clearly explains the Director's views regarding the legal and policy considerations on the issues like why the Director is updating the methodology order and steady-state vs. transient-state modeling. Rule 521 of the Department's Rules of Procedure states: "The presiding officer may limit the type and scope of discovery." IDAPA 37.01.01.521. Accordingly, the Director will limit the scope of the depositions to preclude questions regarding the Director's deliberative process on legal and policy considerations.

### ORDER

Based on the forgoing discussion, IT IS HEREBY ORDERED that the Coalition of Cities' *Motion for Continuance* is DENIED. The Director will consider moving the hearing to other dates within the first three weeks of June 2023 if the parties file a stipulated motion requesting the change.

IT IS FURTHER ORDERED that the Coalition of Cities' *Motion for Appointment of Independent Hearing Officer* is DENIED.

IT IS FURTHER ORDERED that the scope of any deposition of a Department employee will preclude questions regarding the Director's deliberative process on legal and policy considerations.

DATED this 5th day of May 2023.



Gary Spackman  
Director

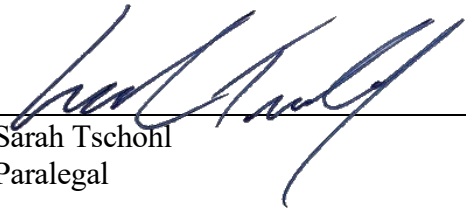
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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**EXHIBIT A-34**

*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**Declaration of Jaxon Higgs**

I, Jaxon Higgs, declare the following:

1. I am over the age of 18 and competent to testify. If called upon to testify, I could testify to the following, all of which are within my own personal knowledge or based upon my professional judgment.

2. I am a licensed professional Geologist in the State of Idaho. I have a bachelor's degree in Geology from Brigham Young University Idaho and a master's degree in Hydrology from the University of Idaho.

3. I am the principal owner and operator of Water Well Consultants ("WWC"), an Idaho corporation with its principal address at 355 W. 500 S., Burley, Idaho 83318. WWC provides a variety of hydrogeologic services in southern Idaho related to aquifer management and water conservation. Contracted duties include, but are not limited to, monitoring of aquifer health, usage measurement and reporting, and management of aquifer recharge programs.

4. I am a consultant for Idaho Ground Water Appropriators, Inc. (“IGWA”). In that capacity I provide technical assistance on a variety of matters, including groundwater modelling and other issues related to the Surface Water Coalition (“SWC”) delivery call.

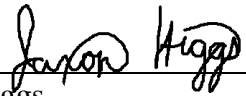
5. From November 16 to December 21, 2022, I participated in several Technical Working Group meetings with the Idaho Department of Water Resources (“Department”) staff via virtual meetings, to review the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fourth Methodology Order”) and the Department staff’s findings. The information covered during these Technical Working Group meetings was complex and voluminous.

6. I have reviewed and consulted with IGWA concerning the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”) issued by the Director on April 21, 2023, and will be involved in reviewing the Fifth Methodology Order, analyzing data, and preparing expert reports.

7. My family has a long-standing road trip vacation to Mexico planned for May 27- June 10, 2023. Therefore, I am unable to participate in the hearing currently scheduled for June 6-10, 2023.


I declare under the penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 4<sup>th</sup> day of May, 2023.

By:  \_\_\_\_\_  
Jaxon Higgs

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

  
Thomas J. Budge

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RECEIVED

May 05, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-35**

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**Declaration of Sophia Sigstedt**

I, Sophia Sigstedt, declare the following:

1. I am over the age of 18 and competent to testify. If called upon to testify, I could testify to the following, all of which are within my own personal knowledge or based upon my professional judgment.

2. I am an American Institute of Hydrology Professionally Certified (No. 7015) Hydrogeologist with a specialization in groundwater. I have a master's degree in hydrology from the New Mexico Institute of Mining and Technology. My work includes hydrogeology, water resources engineering, and water resources planning and management. I have directed or contributed to several river-basin-scale water management studies that involved analysis of basin hydrology and water uses and the development of computer models to investigate implications of changes in hydrology, system operations, and water uses. My experience includes historical consumptive use analysis, evaluation of surface and ground water interactions, development of

protective terms and conditions for water users, settlement negotiations and expert witness testimony. I am employed by Lynker Technology, 5445 Conestoga Court, Suite 100, Boulder, Colorado.

3. For several years I have worked as a technical consultant for Idaho Ground Water Appropriators, Inc. (“IGWA”). In that capacity I participate on the Eastern Snake Plain Hydrologic Modeling Committee, the Big Lost Modeling Technical Advisory Committee, and the Swan Falls Technical Working Group, and have testified as an expert witness in cases before the Idaho Department of Water Resources (“IDWR” or “Department”). I further provide IGWA with technical assistance on a variety of matters, including the Surface Water Coalition (“SWC”) delivery call.

4. From November 16 to December 21, 2022, I participated in several virtual meetings held by Department staff regarding the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fourth Methodology Order”) issued in the SWC delivery call case. Department staff had been reviewing the components of the methodology used to determine material injury to the SWC and related matters. The data shared during these meetings were highly technical, complex and voluminous.

5. On December 23, 2022, I received from Department staff a one-page summary of their “preliminary recommendations on potential technical changes to the methodology.” This document requested written comments be submitted by January 16, 2023.

6. I drafted and submitted to Department staff my preliminary comments to the preliminary recommendations, and comments addressing the other material covered during the November and December Technical Working Group meetings, on January 16, 2023.

7. On April 21, 2023, the Director issued the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”). Based on my review of the Fifth Methodology Order, it does not appear that the Director took into consideration my written comments submitted on January 16, 2023.

8. Step 1 of the Fifth Methodology Order is the analysis of SWC’s total anticipated irrigated acres for the upcoming year. As with prior versions, the Fifth Methodology Order requires the SWC to annually submit either an electronic shapefile delineating total irrigated

acres within their delivery system, or confirm in writing that the acreage submitted previously has not varied by more than five percent. During the technical meetings, Department staff reported that they examined the number of acres irrigated within Twin Falls Canal Company (TFCC) as a check against the acres reported by TFCC. The Department found 179,456 irrigated acres, whereas TFCC reported 194,732 irrigated acres. This is a more than 9% difference, and it exceeds the 5% standard set in the Fifth Methodology Order. A proper evaluation of the Fifth Methodology Order requires consideration of the accuracy of SWC's reported irrigation acreage, which has not been addressed by the Department. In order to properly analyze Step 1 of the Fifth Methodology Order, I want to analyze the most up-to-date real-time METRIC data to audit the number of acres of acres actually irrigated within TFCC and other members of the SWC. The June 6, 2023, hearing date does not allow me sufficient time to perform this analysis.

9. Step 2 of the Fifth Methodology Order requires the Director to compare the April Forecast Supply (FS) to the Baseline Demand (BD) for each SWC entity to determine if an in-season demand shortfall (IDS) is predicted for the upcoming irrigation season. To calculate FS, the Fourth Methodology Order used the Heise natural flow data and in some cases Box Canyon spring discharge from years 1990-2022. IDWR staff reported in a presentation on November 17, 2022, that the  $R^2$  value for the TFCC FS model has degraded continually since the Fourth Methodology Order was issued, which creates significant problems with the reliability of the method used to predict FS. It is also significant that the  $R^2$  value for TFCC, which is often the only SWC entity with a predicted DS, is the lowest  $R^2$  value among the SWC members. In order to properly analyze Step 2 of the Fifth Methodology Order, I want to analyze previously tested FS predictors over the new period of record (POR) 1990-2022, as well as cast a new net of predictor variables that may have higher explanatory power than the current model. The June 6, 2023, hearing date does not allow me sufficient time to properly evaluate and analyze the data.

10. One of the most significant changes to the Fifth Methodology Order is the transition from a three-year composite Base Line Year (BLY) to a single-year BLY. The methodology uses the BLY to calculate Reasonable In-Season Demand (RISD) for each SWC entity in Steps 2, 6, 7 for Demand Shortfall and Step 9 Reasonable Carryover The Fourth Methodology Order used average diversion volumes in 2006, 2008, and 2012 as the BLY. The Fifth Methodology Order uses only 2018 diversions as the BLY. Average diversions in 2006/2008/2012 (06/08/12) ranked between 7th and 8th highest for diversions, or about the 55th percentile (based on a normal

distribution), for the period of record (POR) 2000-2015. For the POR 2000-2021 the diversion demand for 2018 ranks 3<sup>rd</sup>, or about the 90<sup>th</sup> percentile (based on a normal distribution) for the POR. When I compared the distribution of SWC total diversion demands for the POR 2000-2015 compared to 2000-2021, it is apparent that they are very similar with mean diversions of 3.16 million acre-feet and 3.2 million acre-feet, respectively. The standard deviation is also very similar for the POR 2000-2015 compared to 2000-2021 at 178,089 acre-feet and 178,587 acre-feet, respectively. Without evidence that the previous BLY created unmitigated shortages to the SWC, there is not an adequate technical basis to support 2018 as an appropriate BLY. In order to properly evaluate the Fifth Methodology Order, I would need to analyze if there are more appropriate BLY alternatives, and further evaluate the unique hydrologic circumstances in 2018 (i.e. precipitation and water operations) to better establish an appropriate BLY recommendation. I am unable to properly evaluate and analyze this data by the June 6, 2023, hearing date.

11. The RISD calculation applied in Steps 6 and 7 is a function of Crop Water Need (CWN) and Project Efficiency (PE). The inaccuracy of reported irrigated acres for TFCC of more than 15,000 acres will result in an inaccurate determination of CWN. I would want to further analyze and quantify the impact the error of including non-irrigated acres in the calculation of CWN has on the RISD calculation. The June 6, 2023, hearing date does not allow me to properly evaluate and analyze this data.

12. In the Fifth Methodology Order, the Director now finds that averaging over a rolling period of 15 years results in project efficiency that is more appropriate than the previous eight-year average. Project efficiency is a complex component of the Fifth Methodology Order to evaluate as it is a function of seepage or conveyance loss, on-farm application losses (deep percolation, field runoff), and system operational losses (return flows). Information reported by Department staff indicated that there is higher uncertainty in the April and October efficiency values which would result in errors in the determination of RISD. Data also showed the project efficiency among SWC entities are almost all flat or declining (6 out of 7 entities), which is contrary to what would be expected with technology advancements and constrained water supplies. Data presented to the TWG also included scatter plots by SWC entity comparing Annual Crop Water Need to Annual Diversions that show Crop Water Need is limited as a predictor given the low explanatory power indicated by the low  $R^2$  values in the analysis. I want

evaluate and analyze these apparent contradictions and uncertainties. The June 6, 2023 hearing date does not allow me to properly evaluate and analyze this data.

13. Step 3 of the Fifth Methodology Order uses the Eastern Snake Plain Aquifer Model (ESPAM) to predict the junior priority water rights that must be curtailed to produce the volume of water equal to the predicted April DS in the Blackfoot to Minidoka reach. In the Fifth Methodology Order, the Director now finds that transient simulations are necessary to evaluate the impacts of aquifer stresses. The November 28, 2022, presentation by IDWR staff showed a huge difference in resulting determination of the curtailment priority date if a steady state vs. transient model is applied. Under a transient model application, any DS above ~100,000 acre-feet would result in essentially aquifer-wide curtailment. IDWR staff have understood the difference between a transient model and steady state model at least since my involvement began in this case in 2015, so it is difficult to understand what caused the Director to make this change to methodology at this time, especially given the Department staff did not make a recommendation on this topic. During the technical presentations by IDWR staff in November/December 2022, IDWR staff were unable to explain why the change was being evaluated at this time. In order to properly evaluate this change to the methodology, I want to conduct a hindcast analysis using the transient application of ESPAM over all the preceding years to 2023 the Methodology Order has been applied. The June 6, 2023 hearing date does not allow me to properly evaluate and analyze this data.

14. I am unable to perform all of the work required to properly analyze the Fifth Methodology Order before the hearing scheduled for June 6-10, 2023. I estimated that I would need until October to complete this work.

15. I presently have a medical condition that leaves me unable to leave my home state of Colorado, until July 10, 2022. Therefore, I am not able to travel to Idaho for a hearing June 6-10, 2023. My condition further limits the amount of work I am able to perform during this time.

(Remainder of page intentionally left blank)


I declare under the penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 4<sup>th</sup> day of May, 2023.

  
\_\_\_\_\_  
Sophia C. Sigstedt

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

  
Thomas J. Budge

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**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-DC-2010-001

**MOTION FOR RECONSIDERATION**

COME NOW, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (“Coalition of Cities”), by and through their attorneys of record, Candice M. McHugh and Chris M. Bromley, the City of Idaho Falls, by and through its attorney of record, Robert L. Harris, and the City of Pocatello by and through its attorney of record Sarah A. Klahn (collectively the “Cities”), the Idaho Ground Water Appropriators (“IGWA”), Bingham Ground Water District,

Bonneville-Jefferson Ground Water District (collectively the “Groundwater Users”), and pursuant to IDAPA 37.01.01.711 of the Department’s rules of procedure and hereby move for reconsideration of the Director’s April 21, 2023 *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand* (“Methodology Order”) and *Reasonable Carryover and Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”), (collectively the “2023 Orders”).

## INTRODUCTION

On April 21, 2023, at 6:45 p.m., the Director caused to be served on the parties to the Surface Water Coalition (“SWC”) delivery call the above-referenced orders.<sup>1</sup> This Motion asks the Director to reconsider his finding of material injury of 75,200 acre-feet to Twin Falls Canal Company (“TFCC”) based on the fact that if the irrigated acres for TFCC that was discussed during the Technical Working Group (“TWG”) were used in the 2023 Orders, the Director would not have found material injury.

## ARGUMENT

According to the Idaho Supreme Court, when the Director uses a baseline methodology for considering and determining material injury:

the Director has the duty and authority to consider circumstances when the water user is not irrigating the full number of acres decreed under the water right. If this Court were to rule the Director lacks the power in a delivery call to evaluate whether the senior is putting the water to beneficial use, we would be ignoring the constitutional requirement that priority of water be extended only to those using the water.

*A&B v. Idaho Dept. of Water Res.*, 155 Idaho 640, 652, 315 P.3d 828, 840 (2013) (emphasis added).

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<sup>1</sup> The 2023 Orders were not served until 6:45 p.m. Because of this the fourteen-day period to file for reconsideration should run until May 8, 2023. In an abundance of caution, the Groundwater Users are filing this *Motion for Reconsideration* on May 5, 2023, which will be timely supplemented with a technical declaration on May 8, 2023.

According to the *Methodology Order*, members of the SWC are required to “submit electronic shape files to the Department delineating the total anticipated irrigated acres for the upcoming year within their water delivery boundary or confirm in writing that the existing electronic shape file submitted by SWC has not varied by more than five percent.” *Methodology Order* at 39. According to the *As-Applied Order*, on March 10, 2023, “the Department received a letter from . . . Twin Falls Canal Company . . . stating that their total number of acres for 2023 will not vary by more than five percent from the electronic shapefiles submitted in prior years.” *As-Applied Order* at 1. The total number of irrigated acres for TFCC was calculated as “194,732.” *Id.* at 2. The number of irrigated acres is critical in the *Methodology Order* because acres are used as an input in the Director’s quantification of material injury.

As the Director is aware, the SWC delivery call was commenced in 2005. In the intervening eighteen years, the number of irrigated acres has changed. For instance, in 2008, Hearing Officer Gerald Schroeder stated that TFCC claimed it was irrigating “196,162 acres,” and that IGWA had identified “at least 6,600 acres claimed by TFCC in its district are not irrigated.” *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* at 9, 53 (Apr. 29, 2008). The Director acknowledged the same: “Estimates of irrigated acres from the hearing show a trend of decreasing irrigated acres. According to the Hearing Officer, beneficial use cannot occur on acres that have been hardened or are otherwise not irrigated.” *Methodology Order* at 8. Despite these findings and statements, the number of irrigated acres asserted by TFCC has changed very little considering population growth and hardening of acres in Twin Falls County.

When questioned at the April 28, 2023 *Pre-Hearing Conference* why he was proceeding

so quickly to curtail junior ground water users with no time given to develop a record that would account for changes over the last eighteen years, the Director stated that factual issues should have been raised with the TWG:

So again, I understand your arguments, but I have little sympathy for them at this point in time. . . . And I guess I could present facts about the time period within which the facts that you're talking about and the preparation and presentations to the Department took a period of time, but there's also been a period of time of four months, I think, since the last presentation by Department staff to the technical working group, and within which the experts and the parties anticipating the issuance of a Methodology Order certainly could have been preparing for the inevitable.

*Pre-Hearing Conference Transcript* p. 25:18-25; p. 26:1-2 (emphasis added).

In fact, the irrigated area for TFCC was discussed during a TWG meeting on December 21, 2022. During that meeting, IDWR provided the participants with the findings that TFCC is irrigating 180,956 acres. The Director should have used the TWG irrigated acres in his determination of injury – certainly that is what the TWG participants were anticipating. If he had done so, the reduction in demand would be as follows:

<u>TFCC Acres</u>	
Methodology:	194,732 acres (Fifth Methodology Order at 10)
<u>NRT Metric:</u>	<u>180,956 acres (12/21/2022 IDWR Presentation to TWG at 19)</u>
Difference:	13,776 acres

TFCC Average CIR: 2.2 AF/ac (IDWR Spreadsheet - DS RISD Calculator\_2022\_August 15.xlsx; Tab: "Crop Water Need)

TFCC Average PE: 35% (Fifth Methodology Order at 14)

Demand Reduction = (13,776 acres x 2.2 AF/ac) / 0.35

Demand Reduction = **86,600 AF**

*Declaration of Greg Sullivan.*<sup>2</sup>

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<sup>2</sup> As stated in footnote 1, and because of when IDWR served the 2023 Orders, the *Declaration of Greg Sullivan* will be filed on May 8, 2023.

The reduction in TFCC’s diversion demand of 86,600 acre-feet is computed using the reduction in TFCC acres indicated by IDWR’s NRT Metric analysis, which is greater than the predicted 2023 diversion shortage for the TFCC in 2023 of 75,200 acre-feet. In other words, if IDWR’s analysis to remove the non-irrigated acres in the TFCC service area is used in the 2023 Orders, there would be no predicted shortage to the TFCC in 2023.

### CONCLUSION

Idaho’s prior appropriation doctrine does not condone curtailment for acres that are not irrigated. Because the Director’s quantification of material injury was based on flawed data, material injury should not have been predicted. The prediction of material injury has forced the Groundwater Users to secure mitigation that they otherwise would not have been required to obtain. Based on the foregoing, the Groundwater Users request that the Director reconsider his finding of material injury to TFCC based on the fact that if he used the irrigated area that was discussed during the TWG, no injury would have been calculated.

Submitted this 5<sup>th</sup> day of May, 2023.

/s/ Sarah A. Klahn  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of May, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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/s/ Chris M. Bromley  
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*Attorneys for Bonneville-Jefferson Ground Water District*

**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**DECLARATION OF BRYCE CONTOR  
IN SUPPORT OF MOTION FOR  
RECONSIDERATION OF DENIAL  
OF CONTINUANCE**

I, BRYCE CONTOR, under penalty of perjury, make this *Declaration in Support of Motion for Reconsideration of Denial of Continuance*.

1. I am over the age of eighteen (18) and competent to testify in this matter. I make this declaration based upon my own personal knowledge unless otherwise stated.

2. I am currently a senior hydrologist at Rocky Mountain Environmental Associates Inc. in Idaho Falls, Idaho (hereafter “Rocky Mountain”). I have an associate degree in farm crops management from Brigham Young University – Idaho, a Bachelor of Science degree in

agricultural economics from Bingham Young University – Provo, Utah, and a master’s degree in hydrology from the University of Idaho. I am published in the Journal of the American Water Resources Association, in Irrigation and Drainage and as a junior author in the American Journal of Agricultural Economics.

3. I began working in water resources in 1996, with Idaho Department of Water Resources (hereafter “IDWR”). I performed flow measurements, field examinations of beneficial use, GIS mapping of water-right places of use and points of diversion, and prepared water-right recommendations for the Snake River Basin Adjudication.

4. Beginning in 200, I left IDWR for the Idaho Water Resources Research Institute (within University of Idaho) where I worked on water budgets for aquifer modeling, groundwater/surface-water interaction, and some water economics work. In 2010, I transitioned gradually into the private sector, working part-time for the University and part-time for Rocky Mountain Environmental Associates.

5. Currently I work full time at Rocky Mountain after almost three years of limited involvement while working with the Henry’s Fork Foundation and Friends of the Teton River.

6. Bonneville-Jefferson Ground Water District (hereafter “Bonneville-Jefferson”) retained the services of Rocky Mountain to assist the district and its legal counsel with technical matters affecting the litigation in the above-captioned matter. I consult frequently with the district and its legal counsel, and I have personal knowledge of the matters involved in the above-captioned matter.

7. I understand that the Director of the Idaho Department of Water Resources (hereafter “Director”) changed the methodology used to calculate injury to the Surface Water Coalition (hereafter “SWC”) in his 5<sup>th</sup> Amended Methodology Order issued on April 21, 2023. I

also understand that the Director issues the April 2023 As-Applied Order on April 21, 2023, and that the new methodology used in the As-Applied Order calculated a material injury of 75,200-acre feet to SWC. I understand that the As-Applied order calculates a curtailment date of 1953 for groundwater users. I further understand that the Director intends to hold an evidentiary hearing on both these orders beginning on June 6, 2023.

8. In my professional opinion, I do not have time to perform an adequate technical review of the technical information requested from IDWR in this litigation in order to properly testify at hearing. The primary reason for this is that I was never invited to deliberations of the technical working group that advises on technical issues related to the SWC/IGWA Settlement Agreement. I have not received any work products or documentations of decisions or recommendations of that group. I presently do not have access to all the documents and data that I would need to do a defensible technical review of the 5th Methodology Order.

9. I understand that there will be depositions of IDWR personnel late in the middle of May 2023, and that documents and data will be requested. If all those documents and data are produced, the earliest I expect to receive them would be around Monday, May 22, 2023. Even assuming that I could continue technical work on the morning of June 6, that would only give 15 days. If there is a delay in providing the materials, the window would be even shorter.

10. As such, I will be unable to perform comprehensive review and consult with and prepare legal counsel for Bonneville-Jefferson prior to the scheduled hearing date. It is my opinion that I would need at least two months to adequately review and prepare myself and counsel for the hearing.

11. Further your declarant saith not.

DATED this the 5<sup>th</sup> day of May 2023.

/s/ Bryce Conton  
BRYCE CONTOR

## CERTIFICATE OF SERVICE

I hereby certify that on this the 5<sup>th</sup> day of May 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

*/s/ Skyler C. Johns*  
Skyler C. JOHNS

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May 05, 2023

DEPARTMENT OF  
WATER RESOURCES

**EXHIBIT A-38**

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**DECLARATION OF SKYLER C.  
JOHNS IN SUPPORT OF MOTION  
FOR RECONSIDERATION OF  
DENIAL OF CONTINUANCE**

I, SKYLER C. JOHNS, under penalty of perjury, make this *Declaration in Support of Motion for Reconsideration of Denial of Continuance*.

1. I am over the age of eighteen (18) and competent to testify in this matter. I make this declaration based upon my own personal knowledge unless otherwise stated.

2. I am an attorney for the Bonneville-Jefferson Ground Water District (hereafter "Bonneville-Jefferson") in the above-captioned matter, and I have personal knowledge of the matters involved in these legal proceedings.



3. Bonneville-Jefferson has retained Rocky Mountain Environmental Associates, Inc. (hereafter “Rocky Mountain”), to review and advise me on technical matters involved in the above-captioned matter, including matters pertaining the Surface Water Coalition (hereafter “SWC”) water delivery call against the Idaho Ground Water Appropriators (hereafter “IGWA”).

4. On April 21, 2023, the Director of the Idaho Department of Water Resources (hereafter “Director”) changed the methodology used to calculate injury to the SWC in his 5<sup>th</sup> Amended Methodology Order. The Director also the April 2023 As-Applied Order on April 21, 2023, and the new methodology used in the As-Applied Order calculated a material injury of 75,200-acre feet to SWC.

5. Prior to issuing these orders, I never received formal notice from the Idaho Department of Water Resources (hereafter “IDWR”) that the Director would transition from Steady State to Transient State analysis as a tool to calculate material injury to SWC. To my knowledge, the Director never conducted a hearing prior to changing the methodology order. Neither myself, nor the experts who advise me from Rocky Mountain, were involved in any work group or discussions pertaining changes in the methodology order.

During the preliminary hearing held on April 28, 2023, I, on behalf of Bonneville-Jefferson, joined in support of the Motion to Continue filed by the Coalition of Cities to continue the evidentiary hearing set for June 6, 2023. I also expressed my concerns that Bonneville-Jefferson would not have sufficient time to obtain and review relevant information with its experts, and that would impair Bonneville-Jefferson’s ability to adequately review relevant information and develop evidence opposing the Orders before the scheduled hearing date. The Director, however, did not continue the hearing.

6. In my professional opinion, I do not have time to perform an adequate review of the

information requested from IDWR in this litigation in order to properly prepare for the June 6, 2023, hearing. I further do not have adequate time to consult with my experts from Rocky Mountain regarding their review of the information requested from IDWR, nor do I have adequate time to prepare them to testify at the June 6, 2023, hearing. This will impair my ability to develop evidence and legal arguments in opposition to the Orders if the hearing continues as scheduled.

7. As of the date of this declaration, I have not received any work products or documentations of decisions or recommendations from any technical working group as referenced by the Director during the April 28, 2023, preliminary hearing. I presently do not have access to all the documents and data that I would need to review and prepare a defensible legal argument to the 5th Methodology Order.

8. Given the time limitations specified by the Director in his Scheduling Order, I must prepare for depositions of IDWR staff without having access to any of the documents that were relied upon by IDWR. Depositions will occur on May 10 and 12, 2023. I will be unable to adequately prepare effective questions for the deponents as I likely will not have access to any relevant documents or other information prior to these depositions.

9. As such, I will be unable to perform comprehensive review and consult with and prepare legal counsel for Bonneville-Jefferson prior to the scheduled hearing date. It is my opinion that I would need at least 6 months to adequately review and prepare myself and counsel for the hearing.

10. Based upon my knowledge and experience, not granting additional time for Bonneville-Jefferson to obtain review and evidence and legal arguments will cause prejudice to my client's real property interests and rights to due process.

11. Further your declarant saith not.

DATED this 5<sup>th</sup> day of May 2023.

OLSEN TAGGART PLLC

/s/ *Skyler C. Johns*  
SKYLER C. JOHNS

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

*/s/ Skyler C. Johns*  
SKYLER C. JOHNS

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May 05, 2023

DEPARTMENT OF  
WATER RESOURCES

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**DECLARATION OF THANE KINDRED  
IN SUPPORT OF MOTION FOR  
RECONSIDERATION OF DENIAL  
OF CONTINUANCE**

I, THANE KINDRED, under penalty of perjury, make this *Declaration in Support of Motion for Reconsideration of Denial of Continuance*.

1. I am over the age of eighteen (18) and competent to testify in this matter. I make this declaration based upon my own personal knowledge unless otherwise stated.

2. I am currently a staff geologist at Rocky Mountain Environmental Associates Inc. in Idaho Falls, Idaho (hereafter "Rocky Mountain"). Before starting at Rocky Mountain as a staff geologist, I received my Bachelor of Science degree in geology from Brigham Young University in Provo, Utah, and my master's degree from Idaho State University in Pocatello, Idaho.

3. Bonneville-Jefferson Ground Water District (hereafter “Bonneville-Jefferson”) retained the services of Rocky Mountain to assist Bonneville-Jefferson and its legal counsel with technical matters affecting the litigation in the above-captioned matter. I consult frequently with the district and its legal counsel, and I have personal knowledge of the matters involved in the above-captioned matter.

4. I understand that the Director of the Idaho Department of Water Resources (hereafter “Director”) changed the methodology used to calculate injury to the Surface Water Coalition (hereafter “SWC”) in his 5<sup>th</sup> Amended Methodology Order issued on April 21, 2023. I also understand that the Director issues the April 2023 As-Applied Order on April 21, 2023, and that the new methodology used in the As-Applied Order calculated a material injury of 75,200-acre feet to SWC. I further understand that the Director intends to hold an evidentiary hearing on both these orders beginning on June 6, 2023.

5. In my professional opinion, I will not have time to fully understand the 5<sup>th</sup> Amended Methodology Order issued by the Director and perform a comprehensive technical review of it to be prepared for June 6th. I was not invited to any sort of Technical Working Group with IDWR concerning the Methodology Order. Similarly, I received no other indication (i.e., letter, email, etc.) that the Methodology Order would change prior to April 21 when it came out. As such, I do not currently have access to many of the documents and data that I would need to perform the analysis.

6. I understand that Depositions so far will be held in the middle of May 2023, but they will likely not produce documents until after the depositions occur, which only provides about two weeks for a technical review of all information before the date of the hearing.

7. As such, I will be unable to perform comprehensive review and consult with and

prepare legal counsel for Bonneville-Jefferson prior to the scheduled hearing date. It is my opinion that I would need at least two months to adequately review and prepare myself and counsel for the hearing.

8. Further your declarant saith not.

DATED this the 5<sup>th</sup> day of May 2023.

/s/ Thane Kindred  
THANE KINDRED



## CERTIFICATE OF SERVICE

I hereby certify that on this the 5<sup>th</sup> day of May 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

*/s/ Skyler C. Johns*  
SKYLER C. JOHNS

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**IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION OF  
WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**DECLARATION OF GREGORY K.  
SULLIVAN, P.E.**

I, Gregory K. Sullivan, P.E., being duly sworn do depose and state:

1. I make this affidavit based upon personal knowledge and expertise.
2. My professional resume is provided as **Attachment A** to this Declaration.

3. I have 37 years of experience in water resources engineering, water rights engineering, hydrologic analysis, groundwater and surface water modeling, conjunctive administration of groundwater and surface water, and other related disciplines.
4. I have worked on water resources, water rights, and conjunctive administration issues in the Snake River basin since the early 1990s.
5. My clients in the Snake River basin that are affected by the SWC Delivery Call include the City of Pocatello and the Coalition of Cities.
6. I have been a member of the Eastern Snake Plain Hydrologic Modeling Committee (“ESHMC”) since its inception along with other stakeholders in Snake River basin issues. The ESHMC has provided guidance and peer review in the development of the Eastern Snake Plain Aquifer groundwater model (“ESPAM”) since approximately 1999.
7. I have been involved in several water right delivery calls in the Snake River basin including the delivery calls by the Surface Water Coalition (“SWC”), the A&B Irrigation District, and the Rangen Fish Hatchery. My involvement has included preparation of expert reports and presentation of expert testimony at several administrative hearings.
8. My involvement in the SWC delivery calls began with the delivery call made in 2005. In response to that delivery call, I compiled extensive data and analyzed the operations of the SWC irrigation systems. This included several weeks in the field observing diversion and conveyance facilities, irrigated farms, and irrigation application methods. In addition, I was present at the depositions of managers and staff of each of the SWC members regarding irrigation system operations, system losses and efficiencies, record keeping, and other related matters. Based on this information, I prepared analyses of the historical irrigation operations of each SWC member over the period from 1990 – 2006. The results of my work were documented in several expert reports and presented at an IDWR hearing in February 2008.
9. Since the 2008 hearing regarding the SWC delivery call, I have reviewed the various amended methodology orders and the various as-applied orders concerning the SWC Methodology that have been issued over the years. In addition, I was involved in a May 2010 hearing on revisions to SWC Methodology proposed by IDWR based on experience in applying the methodology between 2005 and 2010, and based on recommendations from Hearing Officer Schroeder in his 2008 Order. Following the hearing, IDWR issued on June 23, 2010 the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Second Methodology Order”). The Second Methodology Order contains the framework that forms the basis for the current SWC Methodology procedures.
10. In early 2015, IDWR convened a technical working group (“TWG”) of experts to review proposed changes to the Second Methodology Order. I participated in the TWG on behalf of the City of Pocatello. Several meetings of the TWG were held to

solicit input from the TWG members regarding the SWC Methodology. Following the meetings, IDWR issued recommendations for changes in how the water supplies of the SWC members were forecast and how the crop mix of the SWC members was determined for purposes of estimating crop water need. Other proposed changes to the SWC Methodology were discussed but not implemented. These included determination of supplemental groundwater use by the SWC members, improvements in determination of the irrigated areas of the SWC members, and revisions to the Project Efficiencies used in determining the Reasonable In-Season Demand (“RISD”) of the SWC members. IDWR’s *Third Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Third Methodology Order”) was issued on April 16, 2015, shortly after completion of the TWG meetings.

11. On April 16, 2016, IDWR issued the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fourth Methodology Order”) that included some relatively minor revisions to the Third Methodology Order.
12. In late 2022, I actively participated in several meetings of another TWG that was convened by IDWR to consider potential changes to the Fourth Methodology Order. Given the approximate one-month period during which the TWG meetings took place, there was insufficient time to fully review and respond to the materials that IDWR distributed and the issues that were raised during the meetings. Nonetheless, I performed various preliminary analyses of the Baseline Year (“BLY”) and the SWC Project Efficiencies that are used in the SWC Methodology. Results from these analyses were presented to the TWG during the meetings and written materials and spreadsheets were submitted to TWG members on December 12 and December 21.
13. On December 23, 2022, IDWR issued a one-page *Summary of Recommended Technical Revisions to the 4th Amended Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover for the Surface Water Coalition* (“IDWR Recommendation”). The following is a summary of the proposed recommendations:
  - a. Update the BLY for Reasonable In-Season Demand and Reasonable Carryover from an average of diversions during 2006, 2008, 2012 to the diversions in 2018.
  - b. Update the Project Efficiencies to use average of the computed efficiencies for the SWC members during the previous 15 years instead of the previous 8 years.
14. The IDWR Recommendation document explicitly stated there were no recommendations regarding the following:
  - a. Use of near real-time METRIC for determining crop water need.
  - b. Use of transient modeling to determine curtailment priority dates.

15. On January 16, 2023, I submitted written comments on the IDWR Recommendation including:
  - a. Critique of the proposed changes to the BLY for projecting shortages to the SWC members.
  - b. Critique of the updated Project Efficiencies for computing in-season demand shortages.
  - c. Recommendation that the irrigated area data for the SWC members be updated to reflect the areas that are actually irrigated.
  - d. Recommendation that the crop water needs for the SWC members be adjusted for the supplemental groundwater use on the SWC irrigated lands.
16. There was no acknowledgement and no response from IDWR regarding my comments. Nor was there any further interaction between IDWR and the TWG after receipt of the IDWR Recommendation on December 23, 2022.
17. On April 21, 2023, IDWR issued the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Fifth Methodology Order”) and the *Final Order Regarding April 2023 Forecast Supply* (“April As-Applied Order”). There was no apparent consideration of my comments in either of these orders.
18. Also on April 21, 2023, IDWR issued a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery*. A hearing in the matter is scheduled for June 6-10, 2023.
19. On May 2, 2023, IDWR issued a *Schedule Order and Order Authorizing Remote Appearance at Hearing*. Among the scheduled events are the following:
  - a. May 5, 2023
    - i. Deadline for the Department to identify materials Ms. Sukow and Mr. Anders may rely upon at the hearing.
    - ii. Deadline for the Department to summarize topics Ms. Sukow and Mr. Anders will testify about at the hearing.
    - iii. Deadline for the parties to submit to the Department a written statement of proposed issues for the hearing.
  - b. May 10, 2023
    - i. Deadline for the Department to augment its above-mentioned list of materials Ms. Sukow and Mr. Anders may rely on at the hearing, if needed.
  - c. 7 Days Prior to Hearing Day 1
    - i. Deadline for the parties to complete all discovery.

- ii. Deadline for the parties to deliver copies of their expert reports to the other parties.
  - iii. Deadline for the parties to exchange and file with the Department their proposed lay and expert witness lists. The parties should include a general summary of each witness' anticipated testimony.
20. The proposed schedule leaves less than four weeks before the due date for expert reports and only one week to review the expert reports of others before the hearing. In addition, I, along with some of the other experts, are involved in the consolidated matters of the Big Wood River and Snake River Moratoria for which expert reports are due on June 9, 2023, in the middle of the proposed SWC Methodology hearing. Finally, I have previously scheduled a non-refundable trip to Europe departing on May 17 and returning on June 3, and so, as a practical matter, this leaves less than two weeks for me to complete my expert report.
21. The short time available before my expert report is due is far too little time for me to adequately analyze the Fifth Methodology Order, the April As-Applied Order, review the supporting materials that will be submitted by the IDWR witnesses, assist legal counsel with written discovery and depositions, compile additional data, perform field work, perform the necessary technical analyses, and document my work in an expert report.
22. It has been over 15 years since the 2008 hearing and Hearing Officer Schroeder's ruling that resulted in the Second Methodology Order issued in 2010. This was the last time that the SWC Methodology was significantly scrutinized. We now have 15 years of actual operating experience under the SWC Methodology Orders. Given the substantive changes to the SWC Methodology reflected in the Fifth Methodology Order, now is an appropriate time to fully review those changes, develop a comprehensive record of the 15 years of operating experience under the prior Methodology Orders, and to use this experience to propose and vet potential additional modifications to the SWC Methodology that will protect the SWC members from injury, ensure that the SWC members are operating with efficiently and without waste, protect groundwater users from excessive curtailment and mitigation obligations, and to maximize the beneficial use of the interconnected surface water and groundwater resources of the Snake River and the ESPA.
23. Given sufficient time, I would analyze information and data from the past 15 years of operations under the SWC Methodology Orders to assess changes in the irrigation operations of the SWC members, the improved and expanded availability of hydrologic and water use data, including remote-sensed data. In addition, interviews and/or depositions of IDWR staff and SWC managers and personnel will be necessary to provide context for the past 15 years of operating experience. Thorough review and analysis of this information and data will give me the knowledge that is necessary to recommend and support potential changes to the SWC Methodology.
24. The following is a preliminary high-level overview of the work that should be performed to analyze the operation of the SWC Methodology and the operations of the SWC members during the past 15 years:



- a. Compile, summarize, review, and analyze available hydrologic data and operational data related to the availability and use of water by the SWC members.
- b. Interview and/or depose managers and staff of the SWC members regarding their irrigation operations, data collection practices, and water use records.
- c. Perform site investigations of the SWC member facilities and service areas.
- d. Assess the operations of the SWC members to determine whether they are operating with reasonable efficiencies and without excessive waste consistent with industry standards.
- e. Review and analyze the elements of the SWC Methodology that involve determination of in-season demand shortfalls.
- f. Review and analyze the elements of the SWC Methodology that involve determination of material injury to reasonable carryover.
- g. Review and analyze the elements of the SWC Methodology that involve determination of the priority date for curtailment of junior ground water users in response to computed shortages to the in-season demands and reasonable carryover requirements of the SWC members. This includes the radical change in how the ESPAM is used to determine the curtailment date. Under the Fifth Methodology Order, IDWR is using transient runs of the ESPAM to determine the curtailment date rather than the steady-state runs that have been used in all prior methodology orders. This results in a substantially more senior curtailment date that affects many more groundwater users. The curtailment date in the April As-Applied Order is December 30, 1953, based on a projected combined shortage to the SWC members totaling 75,000 AF. Under the steady-state run procedure of the prior methodology order, the curtailment date would have been sometime in the mid-1980s for a 75,000 AF shortage.

25. I estimate that a minimum of 3 to 5 months will be necessary to adequately perform the work described above and to prepare an expert report to summarize the results of this work. In making this time estimate, I am considering the clear and convincing evidentiary standard that reportedly applies to changes in the SWC Methodology and the attendant need to fully develop the necessary evidence to support my opinions.

I hereby certify that the facts set forth above are true and correct to the best of my information and belief.

DATED this 7th day of May 2023.



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Gregory K. Sullivan, P.E.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2023, a true and correct copy of the foregoing document was served via email to the following:

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Sarah A. Klahn, ISB # 7928

# Attachment A

**Gregory K. Sullivan, P.E.**

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**President and Senior Water Resources Engineer**

**Education:** M.S., Civil Engineering, 1990, University of Colorado - Denver  
B.S., Civil Engineering, 1985, Colorado State University

**Professional Registration:** Professional Engineer in Colorado, Idaho, and New Mexico

**Professional Experience:**

**1990 - Present:** *Spronk Water Engineers, Inc., President and Senior Water Resources Engineer*

Mr. Sullivan has over thirty-five years of experience completing a wide variety of water resources engineering projects. Mr. Sullivan has extensive experience performing historical consumptive use analyses, stream depletions analyses, and reservoir operations studies. Mr. Sullivan serves as the primary consultant to numerous water providers for water supply planning and water rights engineering. In that role, he has been responsible for technical analyses in supporting applications for adjudication of water rights, changes of water rights, exchanges, augmentation plans, and other water right matters. He has led the development of complex surface water operations models that simulate municipal water demands and how those demands maybe met by available water supplies and water rights. Mr. Sullivan has served on the Eastern Snake Hydrologic Modeling Committee that guides the development and use of a regional ground water model of the Eastern Snake River Plain Aquifer since 1996. Mr. Sullivan has provided expert testimony in the U.S. Supreme Court, Colorado Water Courts, Snake River Basin Adjudication Court (Idaho), and in administrative hearings before the Idaho Department of Water Resources.

**Representative Projects:**

*Water Supply Modeling - Texas v. New Mexico and Colorado – Rio Grande Basin*

Mr. Sullivan is the lead modeling expert for the State of New Mexico in an active lawsuit filed by the State of Texas in the U.S. Supreme Court concerning alleged violations of the 1938 Rio Grande Compact. Mr. Sullivan is leading a multidisciplinary team of renowned experts from across the country that is analyzing and modeling the historical operation of the Rio Grande Project and the effects of alleged compact violations asserted in the

claims and counterclaims of the parties. The ongoing work includes compilation and analysis of historical data from before the time of the compact to the present, and development of farm budget models of large irrigation systems in New Mexico, Texas, and Mexico. In addition, Mr. Sullivan is coordinating development and use of a linked surface water (RiverWare) and ground water (MODFLOW) models of the Lower Rio Grande area from Elephant Butte Reservoir in New Mexico to Fort Quitman, Texas. The Integrated Lower Rio Grande Model simulates the essential hydrologic and institutional/management processes associated with irrigation and municipal water systems in the study area, including the allocation, operation, and accounting mechanisms of the Rio Grande Project.

**Water Supply Modeling - Kansas v. Colorado – Arkansas River Basin**

Mr. Sullivan was involved in the refinement and use of the H-I Model of the Arkansas River system in Colorado that was developed to support claims by the State of Kansas that Colorado was violating the terms of the 1948 Arkansas River Compact. The model simulates daily operation of irrigation water uses under approximately two dozen canal systems along the Arkansas River in Colorado between the City of Pueblo and the Colorado-Kansas from 1950 to the present. In addition, the model simulates the operation of sole-source and supplemental irrigation wells, and the impact of those wells on the flow of the Arkansas River. Mr. Sullivan provided expert testimony before a Special Master appointed by the U.S. Supreme Court regarding the use of the H-I Model to evaluate the effects on state line flows resulting from post-compact well development in Colorado.

**Injury Analysis - Kansas v. Colorado – Arkansas River Basin**

Mr. Sullivan developed a model that was used as part of an analysis to compute the economic impacts and monetary damages to Kansas resulting from the compact violations by Colorado that were determined in the Kansas v. Colorado lawsuit. The model was used to translate monthly depletions to usable stateline flows over a 45-year period into impacts to (a) surface water users in Kansas, (b) to supplemental pumping demands in Kansas and (c) to recharge of the regional ground water system. Mr. Sullivan testified before the Special Master regarding the model development, operation, and results.

***Analysis of Replacement Plans - Kansas v. Colorado – Arkansas River Basin***

To continue use of post-compact Arkansas River alluvial wells, the well owners in Colorado were required to develop Replacement Plans to offset the impacts of pumping on senior surface water rights in Colorado and on usable stateline flows to Kansas. Mr. Sullivan analyzed the adequacy of these replacement plans through preparation of historical use analyses, water budgets, and other analyses. In addition, Mr. Sullivan used the H-I Model to simulate the effectiveness of the replacement plans in meeting Colorado's delivery obligations under the Arkansas River Compact. Mr. Sullivan provided expert testimony before the Special Master concerning his analyses of the Colorado Replacement Plans.

***Change of Water Rights - City of Loveland, Colorado***

Mr. Sullivan was the principal investigator for ditch-wide historical use analyses of the major Big Thompson River irrigation ditches that serve lands in and around the City of Loveland. These analyses served as the basis for successful changes of water rights that were approved by the Division 1 Water Court to allow the City to divert its ditch shares at the City's municipal water intakes to help meet its water supply needs. He also guided development of detailed water rights accounting for the City to Mr. Sullivan provided expert testimony in support of the changes of water rights in a contested trial.

***Water Supply Yield Modeling - City of Loveland, Colorado***

Mr. Sullivan led the development of a model to simulate the daily water supply and demand of the City of Loveland over a study period from 1950 - 2017. The water supplies that are simulated in the model include the ditch shares that have been changed to municipal use, Colorado-Big Thompson Project units, Windy Gap Project units, and the operation of the City's Green Ridge Glade Reservoir. The model is used by the City to evaluate the firm yield of its water supply, and how that yield can be increased through acquisition of additional supplies, development of additional storage, changes in water supply operations and other actions.

***Water Supply Planning – ACWWA, Colorado***

Mr. Sullivan has provided water resources and water rights consulting for the Arapahoe County Water and Wastewater Authority for over 30 years. ACWWA serves lands in the Cherry Creek basin south of Denver through a

combination of shallow alluvial wells and deep nontributary Denver Basin wells. Water use from these sources is integrated and optimized through operation of a complex plan for augmentation that provides for replacement of out-of-priority depletions to Cherry Creek to protect downstream senior water users. Mr. Sullivan has performed numerous analyses to evaluate the yield of ACWWA's water supplies, including completion of a raw water master plan in 2018.

**Plan for Augmentation - Upper Cherry Creek Water Association, Colorado**

Mr. Sullivan was instrumental in the development of an umbrella plan for augmentation for five major water users in the Cherry Creek Basin upstream of Cherry Creek Reservoir. The members have pooled their augmentation sources to replace the combined out-of-priority depletions resulting from alluvial well pumping and out-of-priority storage in Cherry Creek Reservoir. The plan includes an innovative method of computing depletions that considers times when Cherry Creek is dry in the vicinity of the member wells.

**Cherry Creek Aquifer Modeling Project – Colorado**

Mr. Sullivan led the development of a basin-wide simulation model of the hydrology and water use in the Cherry Creek basin upstream of Cherry Creek Reservoir. The model simulates the water supplies and water rights of all municipal water providers in the study area and optimizes the alluvial pumping of the water users and the use of Denver Basin ground water replacement supplies. The model also simulates the operation of Cherry Creek Reservoir and Rueter-Hess Reservoir. The model is used by the study participants to evaluate changes in water supply operations and acquisition of new water supplies.

**Snake River Basin Adjudication - Idaho**

Mr. Sullivan assisted the City of Pocatello in filing claims to adjudicate water rights as part of the SRBA. This work included historical research of facilities and water uses to document historical flow rates, volumes, and priority dates to assign to the claimed water rights. Mr. Sullivan provided expert testimony before the SRBA Court to help defend the City's claims that were disputed by others.

**Snake River Delivery Calls - Idaho**

Mr. Sullivan has provided technical analysis and expert testimony to the City of Pocatello in their participation in complex litigation involving water right delivery calls by senior surface water users on the Snake River in Idaho. Pocatello's water supply is derived primarily from junior priority wells that are tributary to the Snake River, and its water supply is threatened by the delivery calls. Mr. Sullivan analyzed the historical operation of seven major irrigation districts that placed the delivery calls to assess the extent of their claimed irrigation water shortages. The irrigation districts serve a combined area of 560,000 acres with annual diversions averaging 3.2 million acre-feet per year. Mr. Sullivan provide expert testimony is several hearings before the hearing officers in Idaho Depart of Water Resources.

**ESPA Cities Mitigation Plan – Snake River Basin, Idaho**

Mr. provided technical expertise and analysis in development of a mitigation plan for Pocatello, Idaho Falls, and more than a dozen other cities to mitigate the impacts of municipal groundwater pumping from the Eastern Snake Plain Aquifer in Idaho. The plan relies largely on aquifer recharge to mitigate the impacts of aquifer depletions from pumping that is projected to increase from about 60,000 acre-feet per year to over 120,000 acre-feet per year over the next 50 years.

**Division 3 Rules Case - Rio Grande Basin, Colorado**

Mr. Sullivan represented a group of surface water right owners that opposed the enactment of administrative rules governing the withdrawal and use of ground water in the Rio Grande Basin in Colorado (Water Division 3). The primary basis for their opposition was that the rules did not provide for mitigation of impacts to a large spring that was the source of their surface water rights and which dried up in conjunction with the large-scale development of ground water irrigation in the area. Mr. Sullivan's work included analysis of the historical irrigation water use by his clients, review of hydrologic data and records, and review of a ground water modeling of the San Luis Valley performed by the State of Colorado. Mr. Sullivan provided expert testimony on behalf of his clients in a trial before the Division 3 Water Court.



**Ground Water Administrative Proceeding – Wood River Basin, Idaho**

Mr. Sullivan represents the Sun Valley Company and the Cities of Ketchum, Hailey, and Bellevue in an administrative proceeding in the Wood River Valley in Idaho. Holders of senior surface water rights are seeking curtailment of junior ground water rights based on allegations of injury being suffered by the seniors, and the Idaho Department of Water Resources is proposing to implement conjunctive administration of groundwater rights and surface water rights to address the injury claims. A groundwater model of the Wood River Valley developed by IDWR with input from stakeholders is being used in the dispute to assess impacts from pumping on surface water supplies. Mr. Sullivan provided expert testimony on behalf of SVC and the Cities in a contested administrative hearing before the IDWR Director. Mr. Sullivan is also a member of a technical working group that has been assembled to develop a groundwater management plan that is hoped to settle the ongoing dispute.

**1985 – 1990:**

**J. W. Patterson & Associates, Inc., Water Resources Engineer**

Performed water supply, hydraulic and hydrologic analyses for agricultural, industrial, commercial, and municipal developments. Managed yield and impact analyses of water rights adjudications, transfers, exchanges and plans for augmentation. Conducted ground water studies including aquifer testing, project dewatering and water well design and construction monitoring.

**Continuing Education:**

Applied Ground-Water Flow Modeling. International Ground Water Modeling Center, Colorado School of Mines, Golden, CO. March 1993.

Introduction to Simulation Training in RiverWare, Center for Advanced Decision Support for Water and Environmental Systems, University of Colorado, May 2016.

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**IN THE MATTER OF THE DISTRIBUTION OF  
WATER TO VARIOUS WATER RIGHTS HELD  
BY AND 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-DC-2010-001

**DECLARATION OF  
GREGORY K. SULLIVAN, P.E.**

I, Gregory K. Sullivan, P.E., being duly sworn do depose and state:

1. I make this declaration based upon personal knowledge and expertise, in support of the Ground Water Users' May 5, 2023, *Motion for Reconsideration* regarding the irrigated acres of Twin Falls Canal Company ("TFCC").
2. My professional resume is provided as **Attachment A** to this Declaration.
3. In late 2022, I actively participated in several meetings of the Technical Working Group ("TWG") that was convened by the Idaho Department of Water Resources ("IDWR") to consider potential changes to the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season*

*Demand and Reasonable Carryover* (“Fourth Methodology Order”). In the *Final Order Regarding April 2016 Forecast Supply (Methodology Steps 1-3)* that applied the Fourth Methodology Order, the irrigated acres for TFCC were calculated as 194,732 acres.

4. On April 21, 2023, the Director issued his *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand* (“Fifth Methodology Order”) and *Reasonable Carryover and Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”). The Fifth Methodology Order and As-Applied Order specify that TFCC is irrigating **194,732 acres**. *Fifth Methodology Order* at 10; *As-Applied Order* at 2.
5. During the 2008 IDWR hearing concerning the SWC Delivery Call that was filed in 2005, SPF Water Engineering, LLC (“SPF”), experts for the Idaho Ground Water Appropriators, Inc. (“IGWA”), submitted a March 20, 2007, expert report entitled *Estimate of Non-Irrigated Acres within the Twin Falls Canal Company Service Area* (Exhibit 4310). In that report, SPF found that of the total 198,632 acres that were adjudicated, 15,043 acres were not irrigated, leaving **183,589 acres** that were irrigated.
6. IDWR used **183,589 acres** as the irrigated area for TFCC for purposes of its reasonable in-season demand (“RISD”) calculations in the 2013 and 2014 Methodology Orders. I have been unable to confirm the acreage figures that were used in 2010 – 2012, but I believe them to be the same 183,589 acres based on the following table pasted from the most recent RISD spreadsheet (DS RISD Calculator\_2022\_August 15.xlsx):

Summary of Irrigated Acres Utilized in Protocol Calculations				
Year	Member ID	Area of Surface Water Irr (ac)	Year Acreage Established	Reference Document
2000-2014	AFRD2	62,361	5/11/2006	Director's Report
2000-2014	A&B*	15,924	5/11/2006	Director's Report
2000-2014	Milner	13,335	5/11/2006	Director's Report
2000-2014	Minidoka	70,144	12/29/2005	Exhibit 4300 Claimed POU Analysis (BID, TFCC, NSCC), Table 6 [15], SPF - 12/29/05
2000-2014	BID	44,715	12/29/2005	Exhibit 4300 Claimed POU Analysis (BID, TFCC, NSCC), Table 6 [15], SPF - 12/29/05
2000-2014	TFCC	183,589	3/20/2007	Exhibit 4310 Estimate of Non-irrigated acres w/in the TFCC Service Area, Table 10 [25], SPF - 3/20/07
2000-2014	NSCC	154,067	5/11/2006	Director's Report

7. During early 2015, IDWR convened another TWG to discuss modifications to the SWC Methodology. The irrigated area for the SWC members was among the topics discussed at these meetings. The table on the following page of acres was contained in a presentation given to the TWG on February 19, 2015, by Matt Anders of IDWR:

SWC Member	2005-2007 SPF	2012 Partial Decrees	2013 SWC Submitted Shapefiles	2013 RISD
A&B		14,637 (2006 PD = 15,924)		15,924
AFRD2		62,361		62,361
Burley	44,715	47,643	46,084	44,715
Milner		13,335		13,335
Minidoka	70,144	75,093	74,112	70,144
NSCC		154,067		154,067
TFCC	183,589	196,162	194,778	183,589

8. Travis Thompson, attorney for several of the SWC members, including TFCC, sent a letter to IDWR Director Spackman on April 8, 2015, requesting that the Director use the “authorized acres” for his client’s natural flow water right for purposes of water rights administration. Mr. Thompson’s letter states in part:

With respect to the Step 1 requirement to confirm irrigated acreage for the year, our clients adopt and resubmit the letter that was delivered to you last year for purposes of 2014 administration. As noted last year, all of our clients' decreed natural flow water rights identify the number of authorized acres to irrigate within their respective project boundaries. Accordingly, the Director is required to use the elements of the partial decrees for purposes of water right administration. I.C. §§ 42-607; 1417.

Moreover, all clients have confirmed that the expected irrigated area within each project this year has not varied by more than 5% from the existing information (electronic shape files) that have been submitted to you in prior years.

The number of irrigated acres identified by existing shape files on file with the SRBA Court or as submitted to you in prior years is as follows: A&B - 15,924; BID -46,083; Milner-13,335; NSCC- 154,067; **TFCC - 194,778**.

Emphasis added.

9. Mr. Thompson had sent a similar letter to Director Spackman in 2014 with the same request to use a figure of 194,778 acres for the TFCC. However, IDWR continued to use the lower SPF figure of 183,589 acres in the 2014 SWC Methodology orders.
10. Beginning in 2015 and continuing through 2022, IDWR used **194,732 acres** as the irrigated area for the TFCC for purposes of the RISD calculations in the SWC Methodology Orders. This is 46 acres less than the TFCC acreage figure that was in Mr. Thompson’s 2014 and 2015 letters. The reason for this slight difference is unknown.
11. In the TWG meetings that were convened by IDWR in late 2022, irrigated area was among the potential changes to the SWC Methodology that were discussed.

12. On December 1, 2023, a presentation was given by IDWR staff (Ethan Geisler, Kara Ferguson, & Matt Anders) entitled, *Proposed Modification to Method for Determining Reasonable In-Season Demand for the Surface Water Coalition: Use of the Near Real Time METRIC*. The presentation included the following slide listing the irrigated acres for the SWC members from various sources.



### SWC Irrigated Acres

SWC Member	Created by SWC or IDWR PPU	Date of Shapefile	Shapefile Acres	If Remove Non-Irrigated Acres with 2011 Irrigated lands Dataset	If Remove Non-Irrigated Acres with 2017 Irrigated lands Dataset	Methodology Acres
A&B	PPU	2010	21,976	21,585	21,634	15,924
AFRD2	PPU	2010	69,279	68,368	66,606	62,361
Burley	SWC	2013	46,035	44,113	44,168	46,035
Milner	PPU	2010	14,844	13,239	13,202	13,335
Minidoka	SWC	2022	75,340	71,295	72,016	75,340
NSCC	PPU	2010	224,463	220,953	218,498	154,067
TFCC	SWC	2013	194,732	179,486	180,956	194,732

The table confirms that the **194,732 acres** used in recent SWC Methodology orders was from the 2013 SWC shapefile submitted by the SWC in 2013. Also of interest are the values determined by IDWR for the TFCC based on IDWR’s 2011 and 2017 Irrigated Lands Datasets when the non-irrigated acres are removed. The resulting values are **179,486 acres** for 2011 and **180,956 acres** for 2017.

13. The irrigated acreage figures determined by IDWR for 2011 (179,486 acres) and 2017 (180,956 acres) are several thousand acres less than the value presented in the 2007 SPF report (183,589 acres) that IDWR used in the SWC Methodology Orders prior to 2015. The decline in acres is reasonable given the continued urbanization of parts of the TFCC service area.
14. In my comments submitted to the IDWR and TWG on January 16, 2023, I indicated that the irrigated acres in the shapefiles submitted by the SWC members should be verified to reasonably match the actual irrigated lands determined from aerial imaging, field verification, and/or remote sensing.

15. IGWA expert, Sophia Sigstedt, made more extensive observations about the TFCC irrigated area in her comments to IDWR and the TWG, also submitted on January 16, 2023:

The IDWR staff presentation regarding near-real-time METRIC application identified a significant shortcoming in the current method for calculating CWN as the fact that the most up-to-date crop data is from the previous year and that SWC irrigated acre datasets sometimes represent service areas, not the actual irrigated land. Non-irrigated acres should not be considered in determining the irrigation supply necessary for SWC members. The METRIC data could first be used to create a standard review process for the Methodology Order Step 1 submittal of irrigated acres by the SWC entities. IDWR staff should use a precise determination of irrigated acreage irrespective of whether it uses METRIC in the calculation of CWN. With IDWR staff only checking against the total acres for the decreed place of use, there is little to no incentive to keep the spatial data for the irrigated acres up to date. The METRIC data would be available for the current irrigation season and can be used to assess actual irrigated land. Some of the preliminary analysis by IDWR staff using METRIC data illustrated that through processing they were able to identify about 15,000 acres within the TFCC irrigated acres dataset that should not qualify as irrigated. The mischaracterized acres were all minor areal corrections but over a large service area such as TFCC added up to a significant amount of erroneous total acres. This just highlights the importance of spending the time to get an accurate picture of irrigated acres for an accurate RISD calculation. As previously noted in Lynker's 2015 comment letter the 5% change standard for SWC submittals should be reconsidered in light of large districts like TFCC where a 5% error in the irrigated acres can result in calculation of tens of thousands of acre-feet of erroneous mitigation obligation. Liz Cresto an IDWR staff member on the TWG in 2015 also made a similar recommendation in her comment letter attached to the staff memorandum.

16. Based on the information presented by IDWR during the TWG meetings and the comments submitted by myself and Ms. Sigstedt on January 16, 2023, I expected the Director would use the irrigated acres for the TFCC that were discussed in the TWG meetings for purposes computing the RISD for the TFCC in 2023. However, the Fifth Methodology Order and the As-Applied Order continue to specify that TFCC is irrigating **194,732 acres**.
17. On May 5, 2023, the Director took official notice of the records of the TWG in his *Notice of Materials Department Witnesses May Rely upon at Hearing and Intent to Take Official Notice*.
18. The 2017 irrigated area determined by IDWR for the TFCC (180,956 acres) is **13,776 acres** less than the value proposed for 2023 (194,732 acres).

19. I computed the reduction in the annual TFCC demand that would occur if the TFCC acres were reduced by 13,776 acres using the average crop irrigation requirement for the TFCC for 2000-2021 (2.2 AF/ac) from the IDWR backup materials for the 2022 SWC Methodology and the average monthly Project Efficiency values from the Fifth Methodology Order (35%) as shown below:

TFCC Acres

Methodology: 194,732 acres (Fifth Methodology Order at 10)  
NRT Metric: 180,956 acres (12/1/2022 IDWR Presentation to TWG at 19)  
Difference: 13,776 acres

TFCC Avg CIR: 2.2 AF/ac (DS RISD Calculator\_2022\_August 15.xlsx)  
TFCC Average PE: 35% (Fifth Methodology Order at 14)

Demand Reduction =  $(13,776 \text{ acres} \times 2.2 \text{ AF/ac}) / 0.35$   
Demand Reduction = **86,600 AF**

20. The 86,600 AF reduction in the TFCC annual diversion demand that results from using the actual irrigated area for the TFCC in 2017 demonstrates the significance of the irrigated area input to the SWC Methodology. The **86,600 AF** reduction in annual TFCC diversion demand is less than the **75,000 AF** of shortage that is predicted for the TFCC in the April 2023 As-Applied Order.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 7th day of May 2023.



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Gregory K. Sullivan, P.E.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of May, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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/s/ Chris M. Bromley  
Chris M. Bromley

# **ATTACHMENT A**

# Attachment A

**Gregory K. Sullivan, P.E.**

---

**President and Senior Water Resources Engineer**

**Education:** M.S., Civil Engineering, 1990, University of Colorado - Denver  
B.S., Civil Engineering, 1985, Colorado State University

**Professional Registration:** Professional Engineer in Colorado, Idaho, and New Mexico

**Professional Experience:**

**1990 - Present:** *Spronk Water Engineers, Inc., President and Senior Water Resources Engineer*

Mr. Sullivan has over thirty-five years of experience completing a wide variety of water resources engineering projects. Mr. Sullivan has extensive experience performing historical consumptive use analyses, stream depletions analyses, and reservoir operations studies. Mr. Sullivan serves as the primary consultant to numerous water providers for water supply planning and water rights engineering. In that role, he has been responsible for technical analyses in supporting applications for adjudication of water rights, changes of water rights, exchanges, augmentation plans, and other water right matters. He has led the development of complex surface water operations models that simulate municipal water demands and how those demands maybe met by available water supplies and water rights. Mr. Sullivan has served on the Eastern Snake Hydrologic Modeling Committee that guides the development and use of a regional ground water model of the Eastern Snake River Plain Aquifer since 1996. Mr. Sullivan has provided expert testimony in the U.S. Supreme Court, Colorado Water Courts, Snake River Basin Adjudication Court (Idaho), and in administrative hearings before the Idaho Department of Water Resources.

**Representative Projects:**

*Water Supply Modeling - Texas v. New Mexico and Colorado – Rio Grande Basin*

Mr. Sullivan is the lead modeling expert for the State of New Mexico in an active lawsuit filed by the State of Texas in the U.S. Supreme Court concerning alleged violations of the 1938 Rio Grande Compact. Mr. Sullivan is leading a multidisciplinary team of renowned experts from across the country that is analyzing and modeling the historical operation of the Rio Grande Project and the effects of alleged compact violations asserted in the

claims and counterclaims of the parties. The ongoing work includes compilation and analysis of historical data from before the time of the compact to the present, and development of farm budget models of large irrigation systems in New Mexico, Texas, and Mexico. In addition, Mr. Sullivan is coordinating development and use of a linked surface water (RiverWare) and ground water (MODFLOW) models of the Lower Rio Grande area from Elephant Butte Reservoir in New Mexico to Fort Quitman, Texas. The Integrated Lower Rio Grande Model simulates the essential hydrologic and institutional/management processes associated with irrigation and municipal water systems in the study area, including the allocation, operation, and accounting mechanisms of the Rio Grande Project.

**Water Supply Modeling - Kansas v. Colorado – Arkansas River Basin**

Mr. Sullivan was involved in the refinement and use of the H-I Model of the Arkansas River system in Colorado that was developed to support claims by the State of Kansas that Colorado was violating the terms of the 1948 Arkansas River Compact. The model simulates daily operation of irrigation water uses under approximately two dozen canal systems along the Arkansas River in Colorado between the City of Pueblo and the Colorado-Kansas from 1950 to the present. In addition, the model simulates the operation of sole-source and supplemental irrigation wells, and the impact of those wells on the flow of the Arkansas River. Mr. Sullivan provided expert testimony before a Special Master appointed by the U.S. Supreme Court regarding the use of the H-I Model to evaluate the effects on state line flows resulting from post-compact well development in Colorado.

**Injury Analysis - Kansas v. Colorado – Arkansas River Basin**

Mr. Sullivan developed a model that was used as part of an analysis to compute the economic impacts and monetary damages to Kansas resulting from the compact violations by Colorado that were determined in the Kansas v. Colorado lawsuit. The model was used to translate monthly depletions to usable stateline flows over a 45-year period into impacts to (a) surface water users in Kansas, (b) to supplemental pumping demands in Kansas and (c) to recharge of the regional ground water system. Mr. Sullivan testified before the Special Master regarding the model development, operation, and results.

***Analysis of Replacement Plans - Kansas v. Colorado – Arkansas River Basin***

To continue use of post-compact Arkansas River alluvial wells, the well owners in Colorado were required to develop Replacement Plans to offset the impacts of pumping on senior surface water rights in Colorado and on usable stateline flows to Kansas. Mr. Sullivan analyzed the adequacy of these replacement plans through preparation of historical use analyses, water budgets, and other analyses. In addition, Mr. Sullivan used the H-I Model to simulate the effectiveness of the replacement plans in meeting Colorado's delivery obligations under the Arkansas River Compact. Mr. Sullivan provided expert testimony before the Special Master concerning his analyses of the Colorado Replacement Plans.

***Change of Water Rights - City of Loveland, Colorado***

Mr. Sullivan was the principal investigator for ditch-wide historical use analyses of the major Big Thompson River irrigation ditches that serve lands in and around the City of Loveland. These analyses served as the basis for successful changes of water rights that were approved by the Division 1 Water Court to allow the City to divert its ditch shares at the City's municipal water intakes to help meet its water supply needs. He also guided development of detailed water rights accounting for the City to Mr. Sullivan provided expert testimony in support of the changes of water rights in a contested trial.

***Water Supply Yield Modeling - City of Loveland, Colorado***

Mr. Sullivan led the development of a model to simulate the daily water supply and demand of the City of Loveland over a study period from 1950 - 2017. The water supplies that are simulated in the model include the ditch shares that have been changed to municipal use, Colorado-Big Thompson Project units, Windy Gap Project units, and the operation of the City's Green Ridge Glade Reservoir. The model is used by the City to evaluate the firm yield of its water supply, and how that yield can be increased through acquisition of additional supplies, development of additional storage, changes in water supply operations and other actions.

***Water Supply Planning – ACWWA, Colorado***

Mr. Sullivan has provided water resources and water rights consulting for the Arapahoe County Water and Wastewater Authority for over 30 years. ACWWA serves lands in the Cherry Creek basin south of Denver through a

combination of shallow alluvial wells and deep nontributary Denver Basin wells. Water use from these sources is integrated and optimized through operation of a complex plan for augmentation that provides for replacement of out-of-priority depletions to Cherry Creek to protect downstream senior water users. Mr. Sullivan has performed numerous analyses to evaluate the yield of ACWWA's water supplies, including completion of a raw water master plan in 2018.

**Plan for Augmentation - Upper Cherry Creek Water Association, Colorado**

Mr. Sullivan was instrumental in the development of an umbrella plan for augmentation for five major water users in the Cherry Creek Basin upstream of Cherry Creek Reservoir. The members have pooled their augmentation sources to replace the combined out-of-priority depletions resulting from alluvial well pumping and out-of-priority storage in Cherry Creek Reservoir. The plan includes an innovative method of computing depletions that considers times when Cherry Creek is dry in the vicinity of the member wells.

**Cherry Creek Aquifer Modeling Project – Colorado**

Mr. Sullivan led the development of a basin-wide simulation model of the hydrology and water use in the Cherry Creek basin upstream of Cherry Creek Reservoir. The model simulates the water supplies and water rights of all municipal water providers in the study area and optimizes the alluvial pumping of the water users and the use of Denver Basin ground water replacement supplies. The model also simulates the operation of Cherry Creek Reservoir and Rueter-Hess Reservoir. The model is used by the study participants to evaluate changes in water supply operations and acquisition of new water supplies.

**Snake River Basin Adjudication - Idaho**

Mr. Sullivan assisted the City of Pocatello in filing claims to adjudicate water rights as part of the SRBA. This work included historical research of facilities and water uses to document historical flow rates, volumes, and priority dates to assign to the claimed water rights. Mr. Sullivan provided expert testimony before the SRBA Court to help defend the City's claims that were disputed by others.

**Snake River Delivery Calls - Idaho**

Mr. Sullivan has provided technical analysis and expert testimony to the City of Pocatello in their participation in complex litigation involving water right delivery calls by senior surface water users on the Snake River in Idaho. Pocatello's water supply is derived primarily from junior priority wells that are tributary to the Snake River, and its water supply is threatened by the delivery calls. Mr. Sullivan analyzed the historical operation of seven major irrigation districts that placed the delivery calls to assess the extent of their claimed irrigation water shortages. The irrigation districts serve a combined area of 560,000 acres with annual diversions averaging 3.2 million acre-feet per year. Mr. Sullivan provide expert testimony is several hearings before the hearing officers in Idaho Depart of Water Resources.

**ESPA Cities Mitigation Plan – Snake River Basin, Idaho**

Mr. provided technical expertise and analysis in development of a mitigation plan for Pocatello, Idaho Falls, and more than a dozen other cities to mitigate the impacts of municipal groundwater pumping from the Eastern Snake Plain Aquifer in Idaho. The plan relies largely on aquifer recharge to mitigate the impacts of aquifer depletions from pumping that is projected to increase from about 60,000 acre-feet per year to over 120,000 acre-feet per year over the next 50 years.

**Division 3 Rules Case - Rio Grande Basin, Colorado**

Mr. Sullivan represented a group of surface water right owners that opposed the enactment of administrative rules governing the withdrawal and use of ground water in the Rio Grande Basin in Colorado (Water Division 3). The primary basis for their opposition was that the rules did not provide for mitigation of impacts to a large spring that was the source of their surface water rights and which dried up in conjunction with the large-scale development of ground water irrigation in the area. Mr. Sullivan's work included analysis of the historical irrigation water use by his clients, review of hydrologic data and records, and review of a ground water modeling of the San Luis Valley performed by the State of Colorado. Mr. Sullivan provided expert testimony on behalf of his clients in a trial before the Division 3 Water Court.

**Ground Water Administrative Proceeding – Wood River Basin, Idaho**

Mr. Sullivan represents the Sun Valley Company and the Cities of Ketchum, Hailey, and Bellevue in an administrative proceeding in the Wood River Valley in Idaho. Holders of senior surface water rights are seeking curtailment of junior ground water rights based on allegations of injury being suffered by the seniors, and the Idaho Department of Water Resources is proposing to implement conjunctive administration of groundwater rights and surface water rights to address the injury claims. A groundwater model of the Wood River Valley developed by IDWR with input from stakeholders is being used in the dispute to assess impacts from pumping on surface water supplies. Mr. Sullivan provided expert testimony on behalf of SVC and the Cities in a contested administrative hearing before the IDWR Director. Mr. Sullivan is also a member of a technical working group that has been assembled to develop a groundwater management plan that is hoped to settle the ongoing dispute.

**1985 – 1990:**

**J. W. Patterson & Associates, Inc., Water Resources Engineer**

Performed water supply, hydraulic and hydrologic analyses for agricultural, industrial, commercial, and municipal developments. Managed yield and impact analyses of water rights adjudications, transfers, exchanges and plans for augmentation. Conducted ground water studies including aquifer testing, project dewatering and water well design and construction monitoring.

**Continuing Education:**

Applied Ground-Water Flow Modeling. International Ground Water Modeling Center, Colorado School of Mines, Golden, CO. March 1993.

Introduction to Simulation Training in RiverWare, Center for Advanced Decision Support for Water and Environmental Systems, University of Colorado, May 2016.



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**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-DC-2010-001

**SURFACE WATER COALITION'S  
OPPOSITION TO GROUNDWATER  
USERS' MOTION FOR  
RECONSIDERATION OF ORDER  
DENYING MOTION FOR  
CONTINUANCE**

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 ("Surface Water Coalition," "Coalition," or "SWC"), by and  
through counsel of record, and pursuant to the Department's Rules of Procedure (IDAPA  
37.01.01.220) hereby file the following response in opposition to the *Motion for Reconsideration*

*of Denial of Continuance (“Motion”)* filed jointly by the Coalition of Cities, Cities of Idaho Falls and Pocatello, the Idaho Ground Water Appropriators, Inc. (“IGWA”), Bonneville-Jefferson Ground Water District, and Bingham Ground Water District (hereinafter collectively referred to as “Groundwater Users”) on May 5, 2023. For the reasons set forth below, as well as those stated on the record at the April 28, 2023 pre-hearing conference, the Director should deny the motion for reconsideration.

### STANDARD OF REVIEW

The Director denied the Groundwater Users’ motion for a continuance. *See Order Denying the Appointment of an Independent Hearing Officer and Motion for Continuance and Limiting Scope of Depositions* (May 5, 2023) (“*May 5 Order*”). The Groundwater Users now ask the Director to reconsider that decision pursuant to Department Rule of Procedure 711 (IDAPA 37.01.01.711). *See Motion* at 2-3. The Director’s review of the motion is governed by the same standard of review of the underlying motion. *See e.g. Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

The Department’s rules authorize a presiding officer to “continue proceedings for further hearing.” Rule 560. Although not stated, the decision to grant a motion for a continuance is presumably vested in the presiding officer’s discretion. Idaho case law provides that the “decision to grant a motion for a continuance rests within the sound discretion of the trial court.” *See State v. Labbee*, 2023 WL 1131212 at \*2 (Idaho Ct. App., Jan. 31, 2023). The Coalition submits that the Director properly exercised his discretion in denying the Groundwater Users’ motion given the unique circumstances of water right administration and the requirement to protect senior water rights during the irrigation season. The Director identified these reasons both at the pre-hearing conference and in his *May 5 Order*.

The Coalition offers the following points in support of the Director’s decision and in opposition to the Groundwater Users’ present request for reconsideration.

**I. IGWA Has No Authority and Has Not Proposed to Mitigate for Non-Member Junior Ground Water Right Holders.**

A fatal flaw in the Groundwater Users’ request for a continuance is their erroneous claim that “IGWA has enough the [sic] water to mitigate for its 2021 breach and for the predicted demand shortfall for the upcoming 2023 season.” *See* Motion at 6. The Groundwater Users also wrongly allege that the “other remaining junior users account a fractional percentage of the groundwater depletions which are allegedly causing injury” and “the Director should consider the junior water users ‘as a whole’ are complying with mitigation plans.” *Id.* at 7.

IGWA’s representative districts do not represent and have no authority to mitigate for any junior groundwater right holders who are not members of a groundwater district. *See* I.C. § 42-5224(6). This is also confirmed in IGWA’s *Notice of Ground Water District Mitigation* (“*Notice*”) wherein the districts represent they are only proposing to mitigate for their members.<sup>1</sup> *See Notice* at 2-3 (“These districts’ proportionate shares of the 63,645 acre-feet demand shortfall predicted in the April 2023 As-Applied Order are as follows . . .”). Stated another way, the *Notice* does not indicate that the districts will mitigate for the entire predicted demand shortfall of 75,200 acre-feet.

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<sup>1</sup> IGWA provided notice of mitigation for Bingham, Bonneville-Jefferson, and Jefferson Clark Ground Water Districts pursuant to its “storage water” mitigation plan (CM-MP-2009-007) and for Aberdeen-American Falls, Carey Valley, Henry’s Fork/Madison, Magic Valley and North Snake Ground Water Districts pursuant to the 2016 stipulated mitigation plan (CM-MP-2016-001). The Districts mistakenly believe they pick and choose which mitigation plans to follow. The Coalition reserves all rights with respect to IGWA’s *Notice* and any notion that the Districts are free to “mix and match” compliance with prior plans and orders. Further, contrary to the Groundwater Users’ claim, nothing in the 2023 *Notice* applies to the parties’ prior settlement concerning certain Districts’ 2021 breach of their mitigation plan. *See* 2021 Settlement at 2 (Sept. 7, 2022) (“Such amounts will be in addition to the long-term obligations set forth in section 3 of the Settlement Agreement and approved mitigation plan”) (emphasis added).

Nowhere in the *Notice* does IGWA claim to represent or mitigate for junior ground water rights represented in the difference between their proportionate share (63,645 af) and the predicted in-season demand shortfall (75,200 af), which is approximately 11,555 acre-feet (i.e. 15%).<sup>2</sup> The Groundwater Users' attempts to minimize this quantity or have it swept into considering junior users "as a whole" across the ESPA is contrary to law and the facts and should be rejected.

Whereas the Director has indicated he does not plan to issue a curtailment order until after the hearing in this matter, each day that passes is critical for purposes of water right administration during the 2023 irrigation season. Thus, any delay in the schedule would inevitably delay administration of any affected junior ground water rights not covered through an approved mitigation plan. Every day that passes furthers the potential that unmitigated pumping will continue to injure senior surface water rights without adequate mitigation as the irrigation season has already commenced throughout the various administrative basins across Eastern Snake Plain Aquifer ("ESPA").

Further exacerbating potential injury this year is a pending sentinel well index measurement for April 2023 that may be approaching the April 2015 level. The attached groundwater level data from one USGS monitoring well going back to early 1950s (2N35E35DCC1) shows a record low reading this spring. *See Ex. A.* The declining groundwater levels are likely reducing hydraulically connected reach gains in the Near Blackfoot to Minidoka reach of the Snake River this year, further reducing available water to the Coalition members. Contrary to the Groundwater Users' theory, just looking at the current snowpack does not tell the whole story on injury to the Coalition, the health and status of the ESPA, or trends in reach gains in the Snake River. *See Motion for Continuance* at 3, (Apr. 28, 2023).

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<sup>2</sup> This number includes the proportionate share assigned to A&B (458 acre-feet).

## II. The Requested Continuance Does Not Account for Non-Compliant Ground Water Districts and Continuing Injury from Out-of-Priority Diversions.

The Steering Committee for the SWC and IGWA held a meeting on April 12, 2023 concerning the Ground Water Districts' 2022 performance and their April 1<sup>st</sup> report. A joint letter was signed and submitted by counsel for IGWA and SWC to the Director stating that SWC asserts that in 2022 certain Districts breached the 2016 stipulated migration plan and order based upon information provided by IGWA. *See Travis L. Thompson April 13, 2023 Letter to Director Gary Spackman*. The Districts disagree that a breach occurred in 2022 and their counsel has indicated they intend to appeal the Director's *Amended Final Order Regarding Compliance with Approved Mitigation Plan* (April 24, 2023) to district court.

At the April 28<sup>th</sup> pre-hearing conference the Director appeared to indicate that he would not address the alleged 2022 breach until after a hearing was held on the Fifth Methodology Order. Based upon IGWA's recent *Notice of Ground Water District Mitigation*, several Districts indicated they intend to mitigate pursuant to the 2016 Stipulated Plan and Order, while Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts apparently propose to mitigate pursuant to a prior "storage only" mitigation plan.<sup>3</sup> *See Notice* at 2-3. Despite receiving "safe harbor" from 2015-2022 and not securing sufficient storage to mitigate predicted in-season injuries in certain years pursuant to the Director's order, these districts now believe they are free to "pick and choose" which plan to follow. Through this filing it is apparent that these three Districts that are parties to the 2015 Settlement Agreement and 2016 Stipulated Mitigation Plan no longer believe they are bound by the Director's orders approving that plan and subsequent addendums.

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<sup>3</sup> The Coalition reserves the right to pursue all administrative and judicial remedies with respect to the Districts' breach of the 2015 Settlement Agreement, the 2016 Stipulated Mitigation Plan and final order approving the same.

Further, it is now known that Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts have each breached the 2016 Stipulated Mitigation Plan and Order again in 2022.<sup>4</sup> These Districts' continued non-compliance in 2022 will have impacts on the Coalition's water supply in 2023. To date, these districts have failed to present any viable proposals to cure the non-compliance despite receiving safe harbor from administration in 2022. The Director's 2016 Order approving the Stipulated Mitigation Plan requires the Ground Water Districts to take actions to restore groundwater levels on the ESPA and it is now obvious that the three named districts will not comply with that order again in 2023. *See Notice* at 2 ("The Districts identified in the following table will provide mitigation to the SWC under the Storage Water Plan").<sup>5</sup>

A delay in the hearing will presumably result in a delay of any required actions by the Districts that breached the 2016 Order in 2022 (according to the Director's indication at the April 28<sup>th</sup> pre-hearing conference), thus further depleting aquifer levels and the source of SWC's natural flow supplies. All the while, the three named Districts will no doubt claim "safe harbor" from administration and will pump their out-of-priority ground water rights unrestricted without taking actions to replenish the aquifer as they previously promised.

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<sup>4</sup> Counsel for IGWA has represented they intend to appeal the Director's recent *Amended Final Order Regarding Compliance with Approved Mitigation Plan* (April 24, 2023). Given this position and the parties' impasse at the April 12, 2023 Steering Committee meeting as documented in the April 13, 2023 letter, the Director should address the Districts' failure to undertake the required conservation obligations in 2022 pursuant to the Second Addendum process and his order approving the same. *See Second Addendum* at 3, section 2.c.iv; *Final Order Approving Amendment to Stipulated Mitigation Plan* (May 9, 2017). The fact Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts are representing they will not comply with that mitigation plan at the outset of 2023 is further reason for the Director to address this matter as soon as possible.

<sup>5</sup> The Districts continued non-performance under the 2016 Stipulated Mitigation Plan exacerbates declining reach gains which were specifically acknowledged in that agreement. To the contrary, the Storage Water Plan does not address the long-term obligations the Districts committed to in 2015.

The blatant repeated failure by Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts to comply with the Director's orders approving the 2016 Stipulated Plan is yet another reason to deny the Groundwater Users' motion to reconsider the denial of their motion for continuance of the hearing in this matter.

### **III. IDWR Has Held Conjunctive Administration Hearings Under Similar Schedules / Virtual Participation Accommodation.**

The bulk of the Groundwater Users' reason for asking for a continuance is the current schedules of certain consultants and counsel. *See Motion* at 3-5. Certainly participating in an administrative with numerous parties, counsel, and expert witnesses can be challenging. On April 21, 2023, cognizant of these challenges and proactively addressing likely petitions for hearing, the Director set a hearing for June 6-10, 2023. While individual schedules may need to be adjusted in order for a particular person to participate in this matter, all parties are subject to the same schedule and deadlines set by the Director, which gave the parties over six weeks to prepare for the hearing.<sup>6</sup> The Groundwater Users fail to recognize that the Surface Water Coalition and its consultants are all required to work within the same timeframe and will have to address their individual schedules as well.

Further, IDWR has previously scheduled and held hearings within similar timeframes, including in this very case. Accordingly, the Groundwater Users should not be surprised as to this type of scheduling in conjunctive administration matters occurring at the outset of an irrigation season.

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<sup>6</sup> The Coalition opposes the Groundwater Users' theory that this hearing could be moved and replace an already scheduled hearing in another contested case. *See Motion* at 8. The consolidated Big Wood River / Snake River Moratorium matter involves a host of other parties, counsel, consultants, and IDWR staff that are not involved in this case. Given the difficulty in scheduling in that matter with the number of counsel involved, the Director had to delay a proposed hearing timeframe from August to October. Further, the moratorium case hearing was set over a month ago and the parties are subject to pending deadlines in that case. *See Notice of Hearing* (March 31, 2023). The Groundwater Users do not speak for the others involved in that matter and have no basis to suggest changing that schedule in the context of a wholly separate case.

In 2010 the Director issued the first methodology order on April 7<sup>th</sup> and held a hearing on both the methodology and the first April As Applied order (dated April 29, 2010) on May 24-26, 2010 (i.e. roughly a similar six-week schedule). On appeal Judge Wildman found that the process employed by IDWR did not violate IGWA's or the City of Pocatello's rights to due process. *See Memorandum Decision* at 35-36, 47 (Gooding County Dist. Ct., Fifth Jud. Dist. CV-2010-382 et al., Sept. 26, 2014). Clearly, water right administration, and any necessary administrative procedures must occur in a timely fashion in order to be effective. The Groundwater Users' requested continuance is the type of situation Judge Wood warned against that would inevitably harm senior rights. *See Order on Plaintiffs' Motion for Summary Judgment* at 97 (*AFRD#2 et al. v. IDWR*, Gooding County Dist. Ct., Fifth Jud. Dist., Case No. CV-2006-600, June 2, 2006) ("In practice, an untimely decision effectively becomes the decision; i.e. 'no decision is the decision.'")

In addition to the prior May hearings held in this case back in 2010, the Director recently initiated an administrative proceeding in Basin 37 in early May 2021 and then held a hearing in early June that year. Requests for continuance and injunctive relief were denied in that case, and the parties accommodated the schedule and presented evidence and exhibits during a five-day hearing held between June 8-12, 2021.

Although travel and participation by out-of-state consultants may pose further challenges in this case,<sup>7</sup> the Coalition would propose that consultants who cannot travel to Boise between June 6 and 10, be allowed to present testimony virtually (i.e. Zoom, Webex, etc.).<sup>8</sup> As virtual

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<sup>7</sup> The City of Pocatello's consultant, Greg Sullivan, has a scheduled trip to Europe but will be back before the hearing and does not claim he cannot attend in person. *See Dec. of Greg Sullivan* at 5, ¶ 20.

<sup>8</sup> The Director has already approved allowing Candice McHugh to participate remotely to accommodate her travel to a college football event. *See Scheduling Order* (May 2, 2023); *see Dec. of Candice McHugh* at 2; *see also, May 5 Order* at 2, n. 1. In light of that accommodation, certainly IGWA's consultant Ms. Sigstedt should be allowed to



hearings have been routinely used in prior administrative and court proceedings around the State of Idaho (particularly during the COVID-19 epidemic), the Department has the technology and capability of handling such requests. A virtual participation accommodation will address the concerns raised by IGWA and the Cities regarding their consultants that may be located out-of-state during that time, or unable to travel to Boise for medical reasons.

The Coalition would agree to work with the parties and their consultants to accommodate such participation during the hearing timeframe and would request the same consideration if needed.

### **III. Bonneville-Jefferson Ground Water District's Decision to Hire New Counsel and Consultants at this Stage Does Not Justify a Continuance.**

Finally, Bonneville-Jefferson Ground Water District makes a specific plea for continuance on the basis that the District recently hired new counsel and consultants. *See Motion* at 5-6. Although the District was previously represented by the law firm of Racine Olson and retained consultants Sophia Sigstedt and Jaxon Higgs, including through the technical working group process last fall and winter, the District has apparently substituted counsel and retained new consultants (Bryce Contor and Thane Kindred, Rocky Mountain Environmental Associates).<sup>9</sup>

While the District has the right to make such changes, those recent changes do not justify continuing a hearing that would inevitably delay conjunctive administration for the benefit of

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participate virtually given her medical restriction that requires her to stay in Colorado until mid-July. *See Dec. of Sophia Sigstedt* at 5. The Coalition would stipulate to Ms. Sigstedt's virtual participation.

<sup>9</sup> Mr. Johns has attended meetings for Bonneville-Jefferson in the past, including the summer of 2022, and recently participated in the hearing on the Director's September 8, 2022 Order held on February 8, 2023. Given that background certainly Mr. Johns has some familiarity with the SWC delivery call and prior orders regarding conjunctive administration. It is not known when Bonneville-Jefferson retained its new consultants.

their members.<sup>10</sup> Moreover, the timing of Bonneville's change is at their own risk given the Director's intention to make adjustments to the methodology order that have been known for months, including by their prior consultants that participated in the technical working group. Such a request for delay is particularly troublesome given Bonneville-Jefferson's repeated failures to comply with its mitigation plan in 2021 and 2022, and its notice that it will not comply with the 2016 Stipulated Plan in 2023. *See Notice* at 2. Moreover, the Director's methodology in this case has been in the public record at IDWR for well over a decade. It is presumed that Bonneville-Jefferson has been fully apprised of the various methodology orders issued between 2010-2016 through its prior counsel and consultants.<sup>11</sup>

In sum, there is no prejudice to Bonneville-Jefferson where it has been aptly represented on these issues by prior counsel and consultants for years, including through the technical working group initiated by IDWR last fall. Changing counsel and consultants is not a valid reason for the Director to reconsider the denial of the motion for continuance.

### **CONCLUSION**

In conclusion the Coalition submits the Director properly exercised his discretion in denying the Groundwater Users' motion for continuance. Time is of the essence for conjunctive administration this irrigation season, and given present aquifer levels and likely decreased reach gains this summer, any delay in the process stands to harm the Coalition's senior surface water rights. The Coalition therefore submits the Groundwater Users' motion for reconsideration should be denied.

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<sup>10</sup> None of the declarations of Bonneville-Jefferson's new counsel or consultants indicate they would not be available to participate at the June 6-10, 2023.

<sup>11</sup> The Technical Working Group presentations and comments were all provided to Bonneville-Jefferson's prior consultants (Ms. Sigstedt and Mr. Higgs) and counsel (Mr. Budge). Further, while the Coalition has similarly retained additional consultants that did not participate in the workgroup, they will likewise be subject to the same timeframe and deadlines to respond and participate in this case.

DATED this 8<sup>th</sup> day of May, 2023.

**MARTEN LAW LLP**



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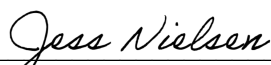
## CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of May, 2023, I served a true and correct copy of the foregoing on the following by the method indicated:

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 \_\_\_\_\_  
 Jessica Nielsen  
 Assistant for Travis L. Thompson

Exhibit

A

An official website of the United States government  
Here's how you know

MENU



IMPORTANT [Legacy real-time page](#)

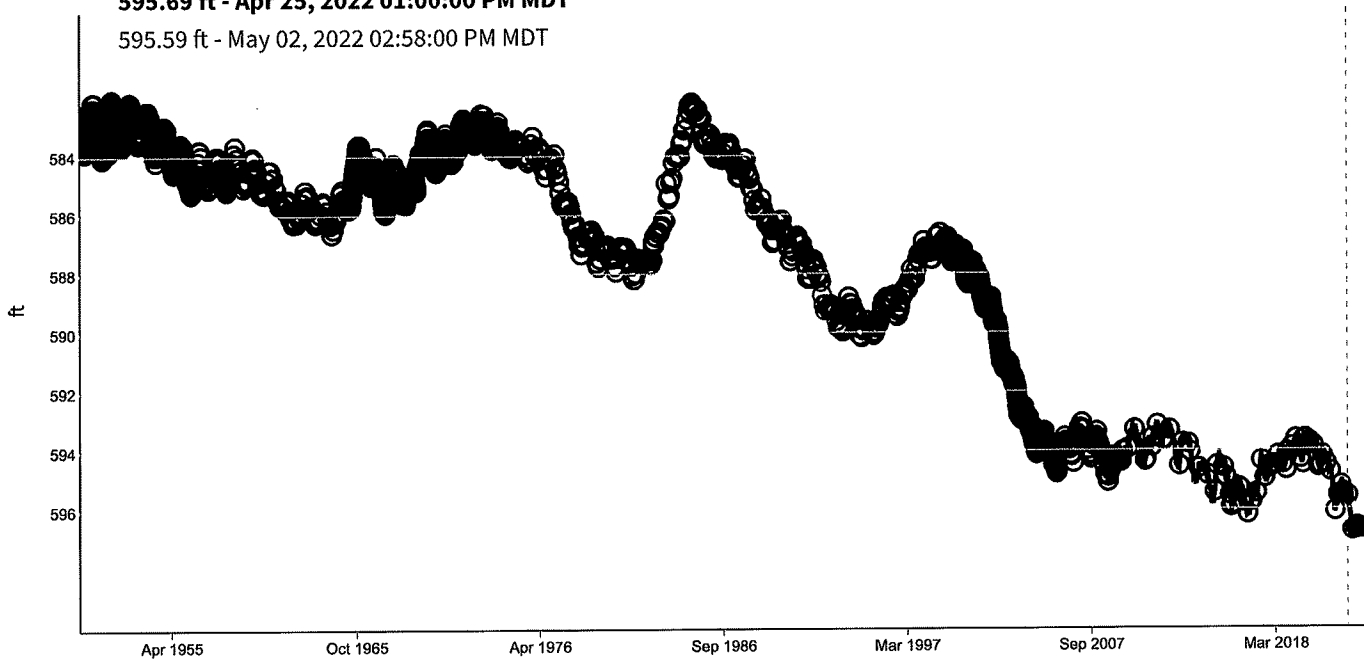
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January 1, 1950 - April 30, 2023

Depth to water level, ft below land surface

595.69 ft - Apr 25, 2022 01:00:00 PM MDT  
595.59 ft - May 02, 2022 02:58:00 PM MDT



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	Value	Status
Latest May 08, 2023 07:00:00 AM MDT	596.93	Provisional
Selected Apr 25, 2022 01:00:00 PM MDT	595.69	Approved
Selected field visit Mav 02. 2022 02:58:00 PM MDT	595.59 ft	Approved

Questions or Comments

**EXHIBIT A-43**

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**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**I.R.C.P. 30(b)(6) NOTICE  
OF TAKING DEPOSITION  
DUCES TECUM OF IDWR**

To: Idaho Department of Water Resources and ITS counsel of record

PLEASE TAKE NOTICE that counsel for Idaho Ground Water Appropriators, Inc., Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and the Cities of Idaho Falls, Pocatello, Jerome, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Paul, Richfield, Rupert, Shoshone, and Wendell will take the deposition of Idaho Department of Water Resources (“Department”) before M&M Court Reporting (“M&M”) in accordance with the *Order Authorizing Discovery* issued April 21, 2023, IDAPA 37.01.01.520.01.a and 37.01.01.520.02, and Idaho Rules of Civil Procedure 26, 30(a), 34 and 30(b)(6). The deposition will commence on a trailing docket immediately following the deposition of Matthew Anders scheduled to begin at



**9:00 a.m. on May 12, 2023**, and continuing from day to day thereafter until completion, at the office of the **Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83702**. The deponent must be present in person. The court reporter will participate in person. Attorney may participate in person or via the Zoom video platform, hosted by M&M. Participants will receive a Zoom link via email from M&M the day before the deposition.

The Department is required to designate one or more persons to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, regarding any information considered by Department staff and/or the Director in developing the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued April 21, 2023 (“Fifth Methodology Order”) and/or the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”) issued April 21, 2023, that is not included among the materials that Ms. Sukow and Mr. Anders may rely upon and the topics they may testify about pursuant to the *Notice of Materials Department Witnesses May Rely Upon at Hearing And Intent to Take Official Notice* issued May 5, 2023, including but not limited to the following:

1. The futile call doctrine pursuant to rules 10.08 and 20.04 of the Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”).
2. The policy of full economic development of underground water resources pursuant to CM Rules 10.07 and 20.03.
3. The policy that an appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water pursuant to CM Rule 20.03.
4. The reasonableness of the diversion and use of water by the Surface Water Coalition pursuant to CM Rules 20.03, 20.05, 40.03, and 42.
5. The extent to which the water needs of the Surface Water Coalition could be met with their existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices pursuant to CM Rule 42.
6. The change from a steady-state to a transient-state application of the ESPA Model in the Fifth Methodology Order.
7. The Department’s review of comments submitted by outside consultants in response to the *Summary of Recommended Technical Revisions to the 4th Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover for the Surface Water Coalition* issued by Department staff dated December 23, 2023.

8. Any alleged non-compliance by groundwater users the so-called IGWA-Surface Water Coalition Settlement Agreement approved as a mitigation plan in IDWR Docket No. CM-MP-2016-001.
9. The documents identified below.

The deponent is required to bring with him or her true and correct copies of all documents reviewed by Department staff and/or the Director in connection with development of the Fifth Methodology Order or the As-Applied Order that relate, directly or indirectly, to the topics identified above, including but not limited to the following:

1. Documents relating to the implementation of a trim line or any other mechanism that could be used to implement the futile call doctrine, the policy of full economic development of underground water resources, and/or the policy that an appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water.
2. Letters, emails, text messages and other correspondence sent by Department personnel to any person not employed by the Department, or received by Department personnel from any person not employed by the Department, concerning the Fifth Methodology Order and/or the April 2023 As-Applied Order, or the development of such orders, prior to 6:45 p.m. mountain daylight time, April 21, 2023.
3. Documents showing the actual or estimated total number of water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans; the total number of water rights by beneficial use (irrigation, municipal, industrial, commercial, etc.) that would be curtailed; and/or the total number of acres authorized for irrigation that would be curtailed.
4. Documents showing the actual or estimated total number of water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
5. Documents showing the number of water rights by beneficial use (irrigation, municipal, commercial, etc.) that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
6. Documents showing the actual or estimated total number of acres authorized for irrigation that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
7. Documents showing the actual or estimated total diversion rate (cubic feet per second) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
8. Documents showing the actual or estimated total volume of water (acre-feet) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.


9. Documents relating to the extent, degree, or magnitude of beneficial use of water that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.
10. Documents relating to projected, estimated, or potential crop loss or any other impairment of beneficial use of water within Twin Falls Canal Company as a result of the 75,200 acre-foot Demand Shortfall predicted by the April 2023 As-Applied Order.
11. Documents comparing the adverse effects of curtailment under the Fifth Methodology Order and/or April 2023 As-Applied Order, in the absence of approved mitigation plan, on beneficial use of the ESPA versus the corresponding benefit to Twin Falls Canal Company.
12. Documents relating to the effect of the Fifth Methodology Order and/or the April 2023 As-Applied Order on ground water districts and/or their patrons who are not compliance with the so-called IGWA-Surface Water Coalition Settlement Agreement approved as a mitigation plan in IDWR Docket No. CM-MP-2016-001.

For purposes of this notice, the term “document” is to be interpreted as broadly as Idaho Rule of Civil Procedure 34 allows and includes all written or graphic matter, whether physical or electronic, however produced, including, but not limited to, letters, emails, text messages, notes, memoranda, meeting minutes, reports, directives, proposals, summaries, analyses, spreadsheets, internal communications, external communications, studies, surveys, working papers, and other physical or electronic data of any kind.

All parties and their counsel are invited to attend. The oral examination will continue from day to day until completed.

DATED this 8<sup>th</sup> day of May, 2023.

RACINE OLSON, PLLP

By:   
 Thomas J. Budge  
*Attorneys for IGWA*

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 Robert L. Harris  
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*Hazelton, Heyburn, Jerome, Paul, Rich-  
field, Rupert, Shoshone, and Wendell*

DYLAN ANDERSON LAW


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Dylan Anderson  
*Attorney for Bingham Ground Water Dis-  
trict*

By:                   /S/                    
Skyler C. Johns  
*Attorneys for Bonneville-Jefferson  
Ground Water District*

## CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:

  
Thomas J. Budge

Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	<a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@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>
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<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH &amp; STONE P.O. Box 910 Burley, ID 83318</p>	<p><a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>

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*Attorney for Bingham Groundwater District*

**STATE OF IDAHO**

**DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE DISTRIBUTION  
OF WATER TO VARIOUS WATER RIGHTS  
HELD BY AND 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-DC-2010-001

**Groundwater Users' First Set of  
Request for Production to IDWR;  
Or, Alternatively, Request  
for Public Records**

**To: Idaho Department of Water Resources**

Idaho Ground Water Appropriators, Inc., Bingham Ground Water District, Bonneville-Jefferson Ground Water District, and the Cities of Idaho Falls, Pocatello, Jerome, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Paul, Richfield, Rupert, Shoshone, and Wendell; and Bingham Ground Water District and Bonneville-Jefferson Ground Water District (collectively, the "Groundwater Users"), hereby require you to produce the following documents pursuant to rules 520 and 521 of the Rules of Procedure of the Idaho Department of Water Resources (IDWR), Rules 26 and 34 of the Idaho Rules of Civil Procedure, and the *Order Authorizing Discovery* issued April 21, 2023, in this matter.

If the Department determines that the information requested below is not discoverable, the Department is requested to produce such documents pursuant to the Public Records Act, Chapter 1, Title 74, Idaho Code. If documents are produced under the Public Records Act, the Groundwater Users will promptly pay statutorily authorized fees upon request.

Given the compressed nature of the hearing schedule in this matter, the Groundwater Users respectfully request that such documents be produced as expeditiously as possible.

### INSTRUCTIONS

1. When answering these discovery requests, you are required to furnish all information and documents known or available upon reasonable inquiry to you.
2. These discovery requests are deemed continuing, and your answers are to be supplemented as additional information become available or known to you.
3. If any requested document was at one time in existence but is no longer in existence, please state: (a) the date it ceased to exist; (b) the circumstances under which it ceased to exist; (c) the identity of all persons having knowledge of the circumstances under which it ceased to exist; and (d) the identity of all persons having knowledge of its contents.
4. If any requested information is withheld due to a claim of privilege, please state: (a) the request to which it is responsive; (b) its title and general subject matter; (c) its date; (d) the names and titles of its authors or preparers; (e) the names and titles of the persons for whom it was prepared and all persons to whom it was sent or shown; (f) the privilege claimed; and (g) sufficient description to enable IGWA to assess the applicability of the privilege as required by I.R.C.P. 26(b)(5)(A).

### DEFINITIONS

1. April 2023 As-Applied Order means the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* issued April 21, 2023, in this matter.
2. Fifth Methodology Order means the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued in this matter on April 21, 2023
3. Fourth Methodology Order means the *Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued April 19, 2016, in this matter.
4. Department means the Idaho Department of Water Resources.
5. Document means any tangible or electronic record, including but not limited to letters, emails, agreements, memoranda, notes, reports, minutes, books, ledgers, invoices, receipts, surveys, photographs, maps, drawings, diagrams, recordings, computer files or other form of data compilation, including duplicates, copies, substitutes, facsimiles, and summaries thereof.
6. ESPA means the Eastern Snake Plain Aquifer.



7. Person means any person or legal entity and its agents or employees.
8. You and your means the Department and its employees, officers, and staff.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Groundwater Users request that the following documents be provided in electronic format via email, thumb drive, or other digital medium. Alternatively, the documents shall be produced for inspection and copying at the office of the Department, 322 Front Street, Boise, Idaho.

**Request for Production 1:** Produce true and correct copies of all documents indicating when the Department first began considering a review and/or revision of the Fourth Methodology Order.

**Request for Production 2:** Produce true and correct copies of all documents indicated when the Department decided to proceed with a review and/or revision of the Fourth Methodology Order.

**Request for Production 3:** Produce true and correct copies of all documents relating to the Department's consideration of, in connection with the Fifth Methodology Order, the futile call doctrine, the policy of full economic development of underground water resources, the policy of reasonable use of water, or the policy of optimum development of water resources.

**Request for Production 4:** Produce true and correct copies of all documents relating to the Department's consideration of, in connection with the Fifth Methodology Order, the extent to which the water needs of the Surface Water Coalition or its members could be met with their existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices.

**Request for Production 5:** Produce true and correct copies of all documents generated, prepared, considered, discussed, utilized, reviewed, evaluated, analyzed, or relied upon by the Department in connection with development of the Fifth Methodology Order and/or the April 2023 As-Applied Order.

**Request for Production 6:** Produce true and correct copies of all letters, emails, text messages and other written correspondence sent by Department personnel to any person not employed by the Department, or received by Department personnel from any person not employed by the Department, prior to 6:45 p.m. mountain daylight time, April 21, 2023, concerning the Fifth Methodology Order, the April 2023 As-Applied Order, or the development, formulation, drafting, implication, application or effect of such orders.

**Request for Production 7:** Produce true and correct copies of all documents showing the actual or estimated total number of water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 8:** Produce true and correct copies of all documents showing the number of water rights by beneficial use (irrigation, municipal, commercial, etc.) that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 9:** Produce true and correct copies of all documents showing the actual or estimated total number of acres authorized for irrigation that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 10:** Produce true and correct copies of all documents showing the actual or estimated total diversion rate (cubic feet per second) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 11:** Produce true and correct copies of all documents showing the actual or estimated total volume of water (acre-feet) authorized for diversion under water rights that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 12:** Produce true and correct copies of all documents relating to the extent, degree, or magnitude of beneficial use of water that would be curtailed under the April 2023 As-Applied Order in the absence of approved mitigation plans.

**Request for Production 13:** Produce true and correct copies of all documents relating to projected, estimated, or potential crop loss or any other impairment of beneficial use of water within Twin Falls Canal Company as a result of the 75,200 acre-feet Demand Shortfall predicted by the April 2023 As-Applied Order.

**Request for Production 14:** Produce true and correct copies of all documents comparing the adverse effects of curtailment under the Fifth Methodology Order and/or April 2023 As-Applied Order, in the absence of approved mitigation plan, on beneficial use of the ESPA versus the benefits of curtailment to Twin Falls Canal Company.

**Request for Production 15:** Produce true and correct copies of all documents that reference or reflect the Department's review or consideration, in connection with the Fifth Methodology Order and/or the As-Applied Order, of any alleged non-compliance with, or breach of, the so-called IGWA-Surface Water Coalition Settlement Agreement approved as a mitigation plan in IDWR Docket No. CM-MP-2016-001.

**Request for Production 16:** Produce true and correct copies of all documents showing the proportionate shares of the projected demand shortfall of 75,200 acre-feet set forth in the April 2023 As-Applied Order attributable to, respectively, North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls Area Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry's Fork Ground Water District, and all documents showing the calculation of their proportionate shares.

DATED this 8<sup>th</sup> day of May, 2023.

RACINE OLSON, PLLP

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Thomas J. Budge  
*Attorneys for IGWA*

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District*

OLSEN & TAGGART PLLC

By: /S/  
Skyler C. Johns  
*Attorneys for Bonneville-Jefferson  
Ground Water District*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of May, 2023, I served the foregoing document on the persons below via email as indicated:

  
Thomas J. Budge

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER)	Docket No.
TO VARIOUS WATER RIGHTS HELD BY OR FOR)	CM-DC-2010-001
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 )	
_____ )	

TRANSCRIPT OF RECORDED PRE-HEARING CONFERENCE

APRIL 28, 2023

TRANSCRIBED BY:

JEFF LAMAR, C.S.R. No. 640

Notary Public

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15 Also Present:

16 Sarah Tschohl

17 Mat Weaver

18 Kara Ferguson

19 Matt Anders

20 Alan Jackson

21 Don Terry

22 Jay Barlogi

23 Paul Arrington

24 Dave Colvin

25

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1 (Beginning of audio file.)  
2 DIRECTOR SPACKMAN: This is Gary Spackman. I'm  
3 the Director of the Idaho Department of Water  
4 Resources.  
5 This is the time and place scheduled for a  
6 pre-hearing conference regarding a hearing that has  
7 been calendared for June 6th through 10th, 2023. And  
8 the hearing was scheduled on my initiative. And the  
9 purpose of the hearing is to present and receive  
10 evidence regarding two orders I issued on April 21st,  
11 2023.  
12 And I will just refer to these. Well, let  
13 me give the titles. One is what we refer to as a  
14 Methodology Order or maybe in a longer version the  
15 Fifth Amended Methodology Order, but its full title is  
16 "Fifth Amended Final Order Regarding Methodology for  
17 Determining Material Injury to Reasonable In-Season  
18 Demand and Reasonable Carryover."  
19 And the other order that was issued was  
20 what we refer to as an As-Applied Order. And the title  
21 of that particular document is "Final Order Regarding  
22 April 2023 Forecast Supply (Methodology Step -- Steps 1  
23 through 3)."  
24 And so I think the first thing I need to do  
25 is probably call roll and determine who's participating

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1 today and who is not.  
2 And so let's start calling roll here. And  
3 I'll just -- Garrick, I'll --  
4 MR. BAXTER: I'm just confirming that we're  
5 recording.  
6 DIRECTOR SPACKMAN: Oh, okay. Good. I thought  
7 when the microphones came on, Sarah, we were good.  
8 Thank you.  
9 Okay. So, again, my name is Gary Spackman,  
10 and we'll go in a clockwise direction around the table  
11 here at the State offices of the Idaho Department of  
12 Water Resources. And then there's some folks sitting  
13 on the perimeter. We'll have them introduce  
14 themselves.  
15 And then I -- I assume there's a large  
16 number of people -- and I'll at least operate off of  
17 the screen rather than have people speak up  
18 voluntarily, and then we'll see if we've left anybody  
19 off.  
20 So to my left, Garrick.  
21 MR. BAXTER: Garrick Baxter, attorney for the  
22 Department.  
23 MR. SIMPSON: Good afternoon. John Simpson,  
24 attorney for the Surface Water Coalition.  
25 MR. THOMPSON: Travis Thompson, Surface Water

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1 Coalition.  
2 SARAH TSCHOHL: Sarah Tschohl, paralegal for the  
3 Department.  
4 DIRECTOR SPACKMAN: And then in -- along the  
5 perimeter.  
6 MR. WOOD: Pete Wood, attorney for the  
7 Department.  
8 MAT WEAVER: Mat Weaver, Department of Water  
9 Resources.  
10 KARA FERGUSON: Kara Ferguson, Department of  
11 Water Resources.  
12 MATT ANDERS: Matt Anders, IDWR.  
13 DIRECTOR SPACKMAN: Okay. And that completes  
14 the roll call for the folks who are here and present  
15 physically.  
16 Now, I'll just look at the screen so I have  
17 I think starting, Elisheva, are you there?  
18 MS. PATTERSON: Yes, I am, Director.  
19 DIRECTOR SPACKMAN: Thank you. And if you'll  
20 just sound off, and even though we probably know, say  
21 who you are representing.  
22 MS. PATTERSON: Yes, of course. This is  
23 Elisheva Patterson on behalf of IGWA.  
24 DIRECTOR SPACKMAN: Thank you.  
25 TJ.

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1 MR. BUDGE: Good afternoon, Director. This is  
2 TJ Budge on behalf of IGWA.  
3 DIRECTOR SPACKMAN: Dylan.  
4 MR. ANDERSON: This is Dylan Anderson on behalf  
5 of Bingham Groundwater District. Good afternoon.  
6 DIRECTOR SPACKMAN: Rob.  
7 MR. HARRIS: Good afternoon, Director. Rob  
8 Harris on behalf of the City of Idaho Falls.  
9 DIRECTOR SPACKMAN: Thank you.  
10 Skyler.  
11 MR. JOHNS: Good afternoon, Director. Skyler  
12 Johns. I represent Bonneville-Jefferson Groundwater  
13 District.  
14 DIRECTOR SPACKMAN: Thank you.  
15 Chris Bromley.  
16 MR. BROMLEY: Good afternoon, Director. Chris  
17 Bromley on behalf of the Coalition of Cities.  
18 DIRECTOR SPACKMAN: And then is it possible,  
19 Sarah, can you advance so I see who else is on? Or is  
20 that possible?  
21 SARAH TSCHOHL: I can bring my laptop to you  
22 because I can't advance that screen.  
23 DIRECTOR SPACKMAN: Huh. Okay. Thank you.  
24 All right. Well, let me see if I can first  
25 pick off the attorneys.



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1 Sarah, are you there?  
2 MS. KLAHN: Good afternoon, Director. Sarah  
3 Klahn for the City of Pocatello.  
4 DIRECTOR SPACKMAN: Is this the total that I  
5 have participating, you think?  
6 SARAH TSCHOHL: It's easier if you look over  
7 here.  
8 DIRECTOR SPACKMAN: Okay. Kent Fletcher, are  
9 you there?  
10 MR. FLETCHER: I'm here, Director, representing  
11 Minidoka Irrigation District and American Falls  
12 Reservoir District No. 2.  
13 DIRECTOR SPACKMAN: All right. Thank you.  
14 And -- well, I hope I haven't missed  
15 anybody.  
16 Is Candice McHugh on? I don't see her.  
17 Chris, do you know anything about Candice  
18 and her participation today?  
19 MR. BROMLEY: Director, yes, she is  
20 participating. If she's not on, I'm not sure why that  
21 is. But Candice McHugh is going to participate today  
22 on behalf of Coalition of Cities and also McCain Foods.  
23 DIRECTOR SPACKMAN: Well, Candice, if you're out  
24 there, sound off; otherwise, we'll move forward in --  
25 MR. BROMLEY: I do have a text from her saying

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1 she's trying to get in.  
2 THE HEARING OFFICER: Oh, now I see she is,  
3 yeah.  
4 MR. BROMLEY: Yeah.  
5 DIRECTOR SPACKMAN: Candice, are you there.  
6 MS. MCHUGH: I am. Sorry. I was -- my -- I  
7 have a tough time sometimes with the audio, and so then  
8 I was going to call in. But I am here now. I can hear  
9 everybody.  
10 DIRECTOR SPACKMAN: Great. Thank you for  
11 participating.  
12 Okay. Now, have I missed any of the  
13 attorneys?  
14 All right. So let's go through the  
15 remainder of the folks who are listening in, just for  
16 the record.  
17 Alan Jackson.  
18 ALAN JACKSON: Yeah, Alan Jackson. Thank you.  
19 I'm the manager of the Bingham Groundwater District.  
20 DIRECTOR SPACKMAN: Thank you.  
21 Don Terry [phonetic]. Don, are you there?  
22 Are you muted? This may not be as critical --  
23 Hello? Don?  
24 DON TERRY: I'm muted.  
25 DIRECTOR SPACKMAN: This may not be -- go ahead.

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1 DON TERRY: I'm muted. Sorry.  
2 DIRECTOR SPACKMAN: Thank you.  
3 Jay Barlogi.  
4 JAY BARLOGI: Good afternoon, Director. Jay  
5 Barlogi with the Twin Falls Canal Company.  
6 THE HEARING OFFICER: Thank you.  
7 Paul Arrington.  
8 PAUL ARRINGTON: Good afternoon, Director. Paul  
9 Arrington, Idaho Water Users. Just observing.  
10 DIRECTOR SPACKMAN: Thank you.  
11 Dave Colvin.  
12 DAVE COLVIN: Hello, Director. Dave Colvin on  
13 behalf of Surface Water Coalition.  
14 DIRECTOR SPACKMAN: Thank you, Dave.  
15 Now, have I missed anybody? I did, yeah.  
16 Okay. I hope we've now called roll and  
17 everybody is registered as participants.  
18 All right. Well, my purpose today is to  
19 talk about schedule and issues, establish times for  
20 preparation. I expect, at least referring back to a  
21 previous pre-hearing conference that I held, I expect  
22 this discussion today may have the semblance of a  
23 rodeo. So let's rope.  
24 So the first thing I guess I would expect  
25 some discussion about is the date set for hearing. And

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1 I know I have at least one document in -- that was  
2 filed with the Department within the last couple of  
3 hours that requests significant delay, continuance in  
4 this hearing.  
5 And I am willing to entertain some  
6 suggestions for change within a narrow window, but I  
7 also have some obligations in terms of the  
8 administration of water rights during this upcoming  
9 season.  
10 Now, I did hear that maybe there were some  
11 background discussions, and perhaps there might be some  
12 agreement between the -- those of opposing or opposite  
13 positions.  
14 Does anybody want to offer something up in  
15 this regard?  
16 MR. BUDGE: Director, this is TJ. I guess I can  
17 comment.  
18 DIRECTOR SPACKMAN: Okay.  
19 MR. BUDGE: Yeah, there was some discussion  
20 about continuing the hearing by stipulation, but no  
21 stipulation has been reached in that regard, so we just  
22 have pending the Cities' motion for continuance.  
23 I have reviewed that, and IGWA would join  
24 in that motion.  
25 DIRECTOR SPACKMAN: Okay. Any -- any other

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1 suggestions?  
2 And then I'll talk through at least what I  
3 think are the requirements of what I need to do.  
4 MS. McHUGH: Yeah, Director. This is Candice  
5 McHugh on behalf of McCain Foods.  
6 And we also would join in the motion here  
7 today to continue the hearing. And we did file a  
8 request for hearing just to cover our bases and kind of  
9 an objection to having that implemented this summer,  
10 but wanted to just make that for the record.  
11 DIRECTOR SPACKMAN: Okay. Thanks.  
12 MR. JOHNS: Director, this is Skyler Johns on  
13 behalf --  
14 DIRECTOR SPACKMAN: Yeah.  
15 MR. JOHNS: -- of Bonneville-Jefferson  
16 Groundwater District.  
17 And as a member of IGWA, we, too, would  
18 join in the motion to continue. We believe that more  
19 time is required to prepare for this hearing.  
20 DIRECTOR SPACKMAN: All right. Thanks, Skyler.  
21 MR. BUDGE: Director, this is TJ again.  
22 I would like to make a brief argument in  
23 support of that motion, but I figured I'd let the  
24 Cities make any argument they wished to make before I  
25 offer my comments.

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1 MR. BROMLEY: Director, this is Chris Bromley on  
2 behalf of Coalition of Cities.  
3 I was waiting to hear if you were wanting  
4 argument on the motion. I can provide brief argument,  
5 as could Mr. Harris or Ms. Klahn or Ms. McHugh, however  
6 you'd like to have it.  
7 DIRECTOR SPACKMAN: Well, I've at least skimmed  
8 the motion that was filed and that some of you have  
9 joined in. So I know at least some of the arguments.  
10 So when TJ Budge offered to argue briefly,  
11 I -- I want to set some reasonable time limit. And I  
12 think a reasonable time limit is one minute apiece. So  
13 if you want to argue, you got one minute apiece. So --  
14 MR. BROMLEY: Director, I'll be very brief.  
15 Point one is unavailability of counsel and  
16 expert witness.  
17 Point two is to your point, which is about  
18 administration of water rights. You have every ability  
19 to administer water rights. This is not like Basin 37  
20 two years ago where you did not have the ability  
21 because you had no finding of material injury. Here  
22 you do. You have multiple iterations of Methodology  
23 Order that allow you to administer water rights.  
24 So you know, you know, point one,  
25 unavailability; point two, you can and you will

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1 administer water rights moving forward. And that goes  
2 directly to the request for appointment of an  
3 independent hearing officer.  
4 That's exactly how Director Tuthill did it  
5 in the past. He appointed Former Chief  
6 Justice Schroeder to be the hearing officer while  
7 retaining all authority to administer water rights.  
8 Thank you.  
9 DIRECTOR SPACKMAN: TJ.  
10 MR. BUDGE: Thank you.  
11 I would concur with Mr. Bromley's  
12 statements and just note that we're not anticipating  
13 that the Department would not undertake administration  
14 while we prepare for a hearing.  
15 What I would like to use my time to do is  
16 just to quote three court cases that are really  
17 relevant to this analysis.  
18 There's the one that the Cities quote in  
19 their brief and that the Department is familiar with.  
20 That's the AFRD2 case, it's often called. And in that  
21 case the Supreme Court said that when it comes to  
22 conjunctive management, quote, "It is vastly more  
23 important that the Director have the necessary,  
24 pertinent information and the time to make a reasoned  
25 decision based on available facts," end quote.

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1 And then two other decisions. One is an  
2 Idaho Court of Appeals decision, State v. Doe, 147  
3 Idaho 542. It's a 2009 decision. And in that case --  
4 I'll just quote a few excerpts related to this topic.  
5 The Supreme Court explained that "meaningful notice  
6 consists of both substantive and temporal components,"  
7 and it went on to say, "the notice must be provided at  
8 a time which allows the person to be reasonably  
9 prepared to address the issue."  
10 And then the last case that I'll quote,  
11 it's Vanelli v. Reynolds School District it's a Ninth  
12 Circuit Court of Appeals case. And it said -- in that  
13 decision the Court said, "The key component of due  
14 process when a decision-maker is acquainted with the  
15 facts is the assurance of a central fairness at the  
16 hearing. At a minimum one must be given a notice and  
17 an opportunity to be heard at a meaningful time and in  
18 a meaningful manner. An individual must have an  
19 opportunity to confront all the evidence induced  
20 against him, in particular that evidence with which the  
21 decision-maker is familiar."  
22 And in closing, I'll just say that I've  
23 spoken with my consultants, and we've reviewed the  
24 information we need and the discovery process that will  
25 be required to obtain it and the time required to

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1 analyze it. And it's impossible for us to be prepared  
2 for a hearing on June 6th.  
3 We expect this to be -- to take several  
4 months. And we understand the Department would be  
5 administering water rights in the meantime.  
6 Thank you.  
7 DIRECTOR SPACKMAN: All right. Any other  
8 statements?  
9 MS. McHUGH: This is Candice.  
10 And I guess I wanted to clarify. I agree  
11 with what Chris and TJ have said, but wanted to clarify  
12 that I believe the idea would be that administration of  
13 the water rights this season, at least from my  
14 perspective, would be under the tested Methodology  
15 Order that we've already been going under, and that the  
16 Amended Methodology Order that we're currently  
17 requesting a hearing on, that that -- that that not be  
18 implemented this season.  
19 And if that is not what Mr. Bromley or  
20 Mr. Budge meant by that you would be administering,  
21 that's what I would be stating in addition to what  
22 they've said, is that you have a methodology that you  
23 can implement to address injury that has already gone  
24 to hearing.  
25 And so staying this particular one until

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1 after a meaningful time for a hearing on the revised,  
2 amended -- or the amended order for this season I think  
3 is reasonable.  
4 DIRECTOR SPACKMAN: Okay. Other statements?  
5 MR. JOHNS: Director, this is Skyler Johns.  
6 I would just echo concurrence with the  
7 concerns about trying to get all the evidence,  
8 synthesize it. I've spoken with Bonneville-Jefferson's  
9 technical experts. It's going to take them time to  
10 collect, synthesize that data.  
11 And also Bonneville-Jefferson would like an  
12 opportunity, in concert with some of the other parties,  
13 to file some memorandum so that we can make sure that  
14 all the issues are presented to the Director, supported  
15 by evidence. And that's just going to take a little --  
16 some more time.  
17 So I join in concurrence with the motion to  
18 continue on that reason.  
19 DIRECTOR SPACKMAN: Thank you, Skyler.  
20 Any other statements?  
21 Okay. Well, let me respond. And I guess  
22 the first thing that I'll say, so I'll draw a  
23 conclusion, and then tell you why.  
24 I intend to hold a hearing for this matter  
25 in the first three weeks of June 2023. And this

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1 particular Methodology Order -- so if within that  
2 period of time the parties can find dates that are  
3 acceptable to them for a hearing, I'm willing to  
4 consider it. But that's the narrow window of time that  
5 I'm willing to work within.  
6 Now, let me go back to the arguments that  
7 were presented regarding preparation and familiarity  
8 with the information that's contained in the Fifth  
9 Methodology Order.  
10 The Department of Water Resources notified  
11 all of the parties last fall that we would be reviewing  
12 the information and presenting that. All of the  
13 parties' expert witnesses were invited to attend, and  
14 there were multiple presentations of that evidence, and  
15 also some conclusions drawn by technical staff about  
16 what -- what information would be reviewed in the  
17 Methodology Order. There were also statements along  
18 the way, and I made them personally, that I intended to  
19 issue and amend the Methodology Order.  
20 And so all of that information has been  
21 presented, and the data, to the parties previously.  
22 And the argument that there needs to be significant  
23 additional time for preparation I think -- well, for  
24 me, falls on unsympathetic ears.  
25 And I have a responsibility to administer

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1 water rights and to ensure that the senior water right  
2 holders are made whole. And I intend to do that.  
3 I also have an obligation, based on the  
4 Court's orders, to not only predict what the water  
5 supply will be, but to issue an order or to review that  
6 information midseason, as well as at the time of need  
7 to determine whether the seniors are receiving the  
8 water that they're entitled to.  
9 So I intend to hold a hearing the first  
10 three weeks of June. If you can agree on a time, I  
11 have some flexibility during that period of time. But  
12 by the fourth week of June, I want to have completed  
13 the hearing itself and have time to issue a decision.  
14 And if the parties disagree with that  
15 timing, if they think that I'm not affording them due  
16 process, then I think there is an alternative route, if  
17 the parties want to go there, to seek a stay from the  
18 courts and establish in front of the Court that I'm not  
19 affording the parties due process.  
20 All right.  
21 MR. BUDGE: Mr. Director.  
22 MR. THOMPSON: I just have a comment, if I  
23 might.  
24 DIRECTOR SPACKMAN: Yeah. Well, Travis  
25 Thompson.

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1 And I'll come back to you, TJ.  
2 Travis.  
3 MR. THOMPSON: Thank you, Director.  
4 We -- we've spoken with our clients, and we  
5 are prepared to go forward with the hearing as  
6 scheduled. I think it does provide over six weeks  
7 since the notice, which is not uncommon what we've seen  
8 in the past in proceedings like this.  
9 I've looked through the Cities' motion. I  
10 don't see -- I mean there is a statement that  
11 Ms. McHugh may be unavailable, but I mean things can  
12 change. I see Greg Sullivan is out of town for a  
13 certain length of time but is not out of town June 6th  
14 through the 10th. So I guess the idea that nobody's  
15 available that week, I'm not seeing that, other than  
16 maybe from Ms. McHugh. But -- and I guess our clients  
17 are concerned that we do get timely administration.  
18 One issue that may be new is groundwater  
19 users who are not covered by a mitigation plan. And  
20 that could be a significant number that's different in  
21 the past. And so to have a due process hearing before  
22 any potential curtailment, if that's necessary, we  
23 think the sooner we have that the better, given the  
24 timing of the irrigation season. We can't wait until  
25 the fall. That's happened in the past. So we think

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1 it's appropriate.  
2 Thank you.  
3 DIRECTOR SPACKMAN: Thank you.  
4 TJ.  
5 MR. BUDGE: Yeah. Thank you, Director.  
6 I appreciate the offer of, you know, some  
7 flexibility. I guess we've heard the Coalition's  
8 position on that.  
9 I just want to maybe illustrate my concern  
10 with what will happen at the hearing. And I appreciate  
11 that the Department staff did share information with  
12 the consultants.  
13 But thinking back, the Department staff  
14 began their analysis of the Methodology Order, or at  
15 least were directed to begin, on August 5th. And they  
16 spent approximately three months reviewing that data.  
17 And then over the next month, they had around six  
18 meetings that were multi-hour meetings with the  
19 consultants going through it. So it's very dense data.  
20 There's a lot of technical stuff at issue.  
21 And then after that process, it was another  
22 four months for the Department to actually issue the  
23 new methodology. And we don't know what went in -- all  
24 went into that. And it's just a really heavy lift.  
25 So I'm afraid what will happen is we'll get

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1 to June 6th and we'll put on what we can, but a lot of  
2 what the evidence will be will be what we would have  
3 liked to examine had we had time to do that.  
4 And we can go to Judge Wildman, you know,  
5 and go through that gyration, but I just don't see the  
6 sense of urgency where we're not in a drought this  
7 year. IGWA has secured storage water to meet the full  
8 obligation of material injury and more. And so I don't  
9 see the same exigency that existed in the Wood River  
10 case.  
11 And from our standpoint it's much more  
12 important that we have a proper hearing where we've  
13 thoroughly vetted all of the evidence and had an  
14 adequate opportunity to explore it than it is to have a  
15 rushed hearing to try to, you know, delay  
16 administration.  
17 So I just wanted to give you some  
18 additional things to consider.  
19 DIRECTOR SPACKMAN: Well, TJ, if there is an  
20 alternative path out there, and IGWA or the Ground  
21 Water Districts or water users as a whole, whose  
22 priority dates are junior to the senior water right  
23 holders, are either complying with a mitigation plan or  
24 have arranged somehow with the senior water right  
25 holders to satisfy the obligation, I'm willing to

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1 listen to some reasonable requests for delay.  
2 But at least right now I'm unaware of any  
3 compliance. In fact, at least factually, I just issued  
4 an order last Monday that determined finally after a  
5 hearing that the groundwater users had breached the  
6 2015 agreement. And there's at least some preliminary  
7 evidence that there may be a deficiency in 2022.  
8 So I'm not aware of any of the compliance  
9 with mitigation plans. And, you know, without that  
10 compliance Judge Wildman's instructions to me have been  
11 in very direct terms, "Director, your job is to curtail  
12 if there's noncompliance."  
13 So again, I understand your arguments, but  
14 I have little sympathy for them at this point in time.  
15 So discuss with the senior representatives  
16 of the senior water right holders, if you want,  
17 regarding the matters that you've raised, but I intend  
18 to move forward. And I guess I could present facts  
19 about the time period within which the facts that  
20 you're talking about and the preparation and  
21 presentations to the Department took a period of time,  
22 but there's also been a period of time of four months,  
23 I think, since the last presentation by Department  
24 staff to the technical working group, and within which  
25 the experts and the parties anticipating the issuance

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1 of a Methodology Order certainly could have been  
2 preparing for the inevitable.  
3 All right. Let's move on, and let's talk  
4 about the preparation.  
5 So I think we need to have some statement  
6 of issues so that we can narrow the focus of the  
7 hearing. And I don't expect that statement to come in  
8 today verbally. We could talk about it, but I'm asking  
9 and will require that there be some submittal of the  
10 statement of issues to be presented at the hearing a  
11 week from today.  
12 All right. Let's talk about deadlines for  
13 preparation. We have already authorized discovery, so  
14 I don't need to issue an order related to discovery.  
15 And the parties can engage in discovery in any form  
16 they want to, except I'll tell you I look with disfavor  
17 on requests for admissions. I think they're just a  
18 trap out there that's a waste of time. So I would ask  
19 that you not -- not engage in those.  
20 And I suspect depositions are probably the  
21 best way to gather evidence or information if you want.  
22 I want to tell you -- hello.  
23 MR. BROMLEY: Director, this is Chris Bromley.  
24 And I hope you recognize that, you know,  
25 civil rules provide 30 days for written responses to

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1 discovery. We mentioned that in our motion.  
2 The truncated schedule that you've set out  
3 simply does not provide to have answers more than a  
4 week before the hearing. I just hope you understand  
5 that.  
6 THE HEARING OFFICER: Well, if that's a concern,  
7 Mr. Bromley, then I will dispense with interrogatories  
8 as part of the discovery process. And I have that  
9 authority, I think, under our rules of procedure. So  
10 we're not required to adhere strictly to the civil  
11 rules of procedure, as I understand it. Okay. And I  
12 don't know what, honestly, in preparation for this that  
13 interrogatories would do for the parties anyway.  
14 All right. I want to disclose the  
15 witnesses that the Department will present and will  
16 offer up both for deposition or informal questions as  
17 the parties wish, and certainly will be subject to  
18 examination.  
19 And those -- the two individuals that I'd  
20 offer up are Jennifer Sukow, who many of you know as  
21 the Department's premier groundwater modeler, and also  
22 Matt Anders, who presented information to the technical  
23 working group and was instrumental in the background in  
24 technical analysis.  
25 And so those two individuals will be

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1 Department witnesses. We intend to question -- or  
2 those two witnesses will be questioned at the hearing,  
3 and as a preliminary matter to work through the  
4 documents themselves, and also talk about the  
5 information and will be subject to examination.  
6 We don't intend as a Department to -- and I  
7 don't intend to ask staff to prepare a staff  
8 memorandum. So we won't have those memorandums as  
9 sometimes in hearings the hearing officer's requested  
10 of staff.  
11 And part of the reason for the  
12 non-preparation is the presentation of that evidence --  
13 that information and evidence over the -- over the last  
14 eight or nine months. It should be available to the  
15 parties anyway.  
16 And the order itself, particularly the  
17 Methodology Order, as represented earlier, is a dense  
18 document containing a lot of that information already.  
19 Mr. Simpson.  
20 MR. SIMPSON: Mr. Director, with respect to the  
21 methodology, and I did participate, along with others,  
22 during that process with your staff, is there any other  
23 information beyond what's contained in the order that  
24 might be made available to the parties? I guess has  
25 all that information either -- I know the presentations

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1 were made available back at that time by Jennifer and  
2 by Matt and others.  
3 Is there any other information that maybe  
4 we don't have readily available to us that could be  
5 made available on a website or otherwise?  
6 MR. BAXTER: Director.  
7 DIRECTOR SPACKMAN: Yeah, Garrick.  
8 MR. BAXTER: This is Garrick Baxter for the  
9 Department.  
10 I might suggest that we set a deadline for  
11 IDWR to identify any additional information that might  
12 be helpful. We just think that might be a good pathway  
13 for it on this particular issue.  
14 DIRECTOR SPACKMAN: And a suggested date? A  
15 week?  
16 MR. BAXTER: Yeah, we could do it in a week.  
17 DIRECTOR SPACKMAN: Okay. So same time issues  
18 are identified. Next Friday the Department has a  
19 deadline.  
20 Now, I anticipate -- we talked about this  
21 subject previously. I -- I think there may be some  
22 background data, although I don't -- well, there is.  
23 And maybe where that data is located or in what form,  
24 all of that may be helpful, if it's not already  
25 available.

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1 Garrick.  
2 MR. BAXTER: Director, actually, could we -- I  
3 think the statement of issues might affect what  
4 information -- additional information we might need to  
5 be able to provide. So if that request comes -- if the  
6 statement-of-issues deadline is a week from today, is I  
7 think what you said, could we have until Wednesday of  
8 the following week? So a few more additional days to  
9 review that statement of issues and prepare and  
10 identify documents, and then get that to the parties?  
11 DIRECTOR SPACKMAN: Well, let's do it this way:  
12 Let's post what we can and what we know by Friday.  
13 MR. BAXTER: Okay.  
14 DIRECTOR SPACKMAN: And then if we need to  
15 augment based on the issues that are identified, we'll  
16 augment by Wednesday, if that's okay.  
17 MR. BAXTER: Sounds good.  
18 MS. KLAHN: Mr. Director, this is Sarah Klahn.  
19 May I ask a question?  
20 DIRECTOR SPACKMAN: Sure.  
21 MS. KLAHN: One of the primary concerns about  
22 the Fifth Methodology Order is the shift to transient  
23 modeling rather than steady state. And I participated  
24 in those technical working groups as an observer, and I  
25 don't recall any discussion of the transient modeling

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1 approach.  
2 So I mean I suppose I could be incorrect  
3 about that. I wonder if somebody could confirm for me  
4 that the transient modeling issues were discussed as  
5 part of the technical workgroup.  
6 DIRECTOR SPACKMAN: We -- Jennifer Sukow is not  
7 here, but Matt Anders is. But maybe John Simpson  
8 wanted to --  
9 MR. SIMPSON: Yeah. Mr. Director, I know  
10 Jennifer had a presentation, a PowerPoint presentation  
11 that she provided sometime early December, late  
12 November on that issue and described the differences  
13 between steady-state modeling and transient modeling.  
14 So that was part of the presentation that she provided.  
15 DIRECTOR SPACKMAN: Do you want to affirm, Matt?  
16 MATT ANDERS: Yes, Mr. Director. We did -- she  
17 did give her presentation, and we can make that  
18 available again.  
19 DIRECTOR SPACKMAN: Well, we need to have all of  
20 those presentations in some form out there, so...  
21 MR. BAXTER: We can make them available.  
22 DIRECTOR SPACKMAN: That should be part of  
23 what's presented on Friday. And --  
24 MR. BUDGE: Mr. Director.  
25 DIRECTOR SPACKMAN: Yeah.

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1 MR. BUDGE: Just, Sarah, for your benefit, it  
2 was discussed in one of the meetings, but the staff  
3 recommendation document did not include that  
4 recommendation.  
5 And this leads to another question I've  
6 got: You know, some analysis and work happened after  
7 the staff recommendation. You know, that provided  
8 information. But from there to the conclusion, you  
9 know, the development of the Methodology Order, I need  
10 to know who participated in those subsequent processes  
11 to develop the new methodology. I suspect we'll want  
12 to depose them as well.  
13 DIRECTOR SPACKMAN: Garrick.  
14 MR. BAXTER: Director, I think you have a couple  
15 different options there. The request to identify  
16 individuals to testify on behalf of the Department,  
17 you've identified Matt Anders and Jennifer Sukow.  
18 If somebody has questions about the process  
19 in which the Department went through, they can ask  
20 questions of those two witnesses to identify who -- who  
21 additionally participated.  
22 Am I -- do I believe that you're compelled  
23 to allow somebody to depose every IDWR employee who  
24 might have touched this at some point in time? I don't  
25 think you're compelled to do that.

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1 DIRECTOR SPACKMAN: No, I don't think so,  
2 although I want to accommodate any reasonable request  
3 by parties. I don't want to stonewall them if they --  
4 if there's someone that assisted Jennifer in that  
5 effort, I -- I think I'd be happy to make them  
6 available.  
7 I think there was -- you know, there was  
8 some quality control and secondary checks, that at  
9 least I've been told, by independent staff to ensure  
10 that, you know, the computations were correct. And I  
11 don't know that the parties want to get into trying to  
12 figure out whether, you know, something happened in the  
13 quality control. The experts ought to be able to  
14 determine whether those computations were correct or  
15 not.  
16 But to the extent there's somebody else out  
17 there, I mean we could ask Jennifer and have her  
18 disclose who it was that participated. I think that  
19 list will be very short. One or two people maybe.  
20 And -- but, you know, if the parties want  
21 to go that far, I don't -- I don't have a problem with  
22 extending the opportunity to depose those people. But  
23 I don't want to open it up to everybody in the  
24 Department.  
25 MR. BUDGE: And I can clarify.

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1 I'm not concerned about the quality control  
2 aspect of it. I'm concerned or interested more in some  
3 of the policy-related decisions.  
4 When we had the meetings with Matt, some of  
5 the issues he declined to address or make a  
6 recommendation on because he reported that they were  
7 more of a policy nature.  
8 And so my interest is more in, you know,  
9 outside of the technical input, I don't know if Mat  
10 Weaver was involved or other Department folks from that  
11 standpoint, but I'm assuming that it wasn't just Matt  
12 and Jennifer that wrote the new methodology.  
13 I'm assuming the Director was not involved  
14 in writing that. I could be mistaken about that. But  
15 we need to understand who participated, because I need  
16 to understand what their thinking was about some of  
17 those decisions. And so that's what I'm trying to get  
18 at.  
19 DIRECTOR SPACKMAN: Well, for me to extend the  
20 opportunity for discovery to those people within a  
21 circle that are writing the document itself, TJ, I  
22 wrote the document. I signed it. And I don't work in  
23 a vacuum. I have staff that assists me.  
24 And I'm -- I'm not -- I'm not making myself  
25 and other staff and those discussions available unless

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1 you can -- you can articulate a reason why I should.  
2 So this is an evidentiary hearing. And the  
3 evidence should relate to the facts and the data and  
4 the process by which -- and when I say "process," I  
5 mean the technical analysis that led to the decision.  
6 All right.  
7 MR. BROMLEY: Director.  
8 DIRECTOR SPACKMAN: Yeah.  
9 MR. BROMLEY: This is Chris Bromley.  
10 In the past, past practice has been to  
11 identify names of staff who have participated in  
12 certain enumerated paragraphs so that we're given an  
13 opportunity to understand -- I recognize you signed the  
14 document. You stated you signed the document. We  
15 could see that you signed the document. But you also  
16 mentioned that there were staff who were assisting.  
17 So past practice has been to identify staff  
18 who assisted in particular paragraphs. If we could  
19 have a list like that, that would help us in our  
20 preparation for this evidentiary hearing.  
21 Thank you.  
22 DIRECTOR SPACKMAN: Well, I'll -- Garrick.  
23 MR. BAXTER: Director, I think, you know, from  
24 the analysis of baseline year and those particular  
25 aspects of it, you've identified -- the person you've

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1 identified is Matt Anders to talk about the technical  
2 data, baseline year calculations associated with that,  
3 and every -- you know, those main particular pieces.  
4 And then the modeling and the analysis of  
5 transient versus steady state, you've identified  
6 Jennifer. And so I don't know what value there would  
7 be going through paragraph by paragraph. I think  
8 you've identified for topics, you know, who would be  
9 the most appropriate individual for them to depose, who  
10 the Department is going to make available to testify as  
11 to those factual aspects of the process.  
12 DIRECTOR SPACKMAN: Yeah, I think I'll limit  
13 the -- the disclosure to the people we've identified.  
14 And if there are issues that you can identify that are  
15 outside of those that -- Matt Anders or Jennifer could  
16 discuss, then we'll consider enlarging the list.  
17 All right.  
18 MS. MCHUGH: Mr. Director, this is Candice.  
19 And I -- I'm representing McCain and  
20 obviously the Coalition of Cities. And I understand at  
21 this point that the hearing is going to take place  
22 during a week where I am out of state, which I'm not  
23 out of state on any, you know, frivolous matter.  
24 But regardless, as an accommodation to the  
25 fact that I will be out of the state, and McCain

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1 specifically is one of those unique water users that is  
2 not found within any mitigation plan at the moment,  
3 would the Director agree to allow me to participate via  
4 video? I'll have Sarah Klahn and Chris Bromley and Rob  
5 Harris, who I work closely with, to be able to be in  
6 the courtroom.  
7 But there are things that, you know, would  
8 be helpful for me and Chris, since we are only a  
9 two-person shop, to be able to collaborate on and help  
10 at the hearing.  
11 And it seems reasonable, given the fact  
12 that I would be the only one participating remotely, I  
13 guess. And that I can't move my -- my out-of-state  
14 obligation at this point.  
15 DIRECTOR SPACKMAN: Okay. I'll consider the  
16 request, given the short time period. And I  
17 anticipated that there would be conflicts.  
18 I don't want everybody participating  
19 remotely. I think the control of a hearing with this  
20 many participants is almost impossible. And I want  
21 people to be here. But I'll consider the request, and  
22 we'll see if we could set it up. If I get multiple  
23 requests, I may just deny all of them.  
24 Okay. Let's talk about schedule now. And  
25 one of the issues that I guess we need to talk about is

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1 the order of presentation of evidence. But that's  
2 probably premature.  
3 What kinds of additional deadlines do the  
4 parties want to establish today?  
5 MS. KLAHN: Mr. Director, this is --  
6 MR. THOMPSON: Mr. Director, this is Travis  
7 Thompson.  
8 I think just a deadline to exchange witness  
9 and exhibit lists would probably be appropriate.  
10 DIRECTOR SPACKMAN: Sarah.  
11 MS. KLAHN: That was going to be my suggestion  
12 as well.  
13 DIRECTOR SPACKMAN: Okay. So we're looking  
14 still at the 6th through the 10th. And I want to say  
15 that I hope it's the 6th through the 9th, but I  
16 couldn't extend it into the next week without  
17 conflicting with Paul Arrington's water law seminar.  
18 And I promised Paul I wouldn't do that to him.  
19 So deadline for exchange of witness lists  
20 and --  
21 MS. KLAHN: Mr. Director, to the extent we're  
22 still potentially talking about moving the dates to  
23 sometime in the first three weeks of June, other than  
24 the 6th through the 10th or the 6th through the 9th,  
25 maybe the scheduling order could say that exhibit and

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1 witness lists are due seven days before the start of  
2 the hearing. That way if things get moved, you  
3 wouldn't have to issue a new scheduling order on this.  
4 DIRECTOR SPACKMAN: Is that acceptable,  
5 everybody?  
6 UNIDENTIFIED SPEAKER: Yes.  
7 UNIDENTIFIED SPEAKER: Works for us.  
8 DIRECTOR SPACKMAN: Seven days ahead of time.  
9 Okay. Other matters we need to talk about?  
10 Garrick.  
11 MR. BAXTER: Director, I think in a scheduling  
12 order it would be wise for us to identify that the  
13 parties need to bring copies of -- three copies of any  
14 exhibit with them to the hearing, so we'll include that  
15 in any scheduling order.  
16 One other thing that was identified is  
17 discovery -- I don't know if the parties are thinking  
18 of discovery timing, do they -- because I think the  
19 Director has the authority to shorten deadlines related  
20 to discovery.  
21 And so if the parties are still concerned  
22 about that, I think -- I think here's an opportunity to  
23 shorten those time frames if folks still want to serve  
24 discovery related to document production or other  
25 similar things, but...

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1 MS. KLAHN: Thank you, Garrick.  
2 I'd like to see a deadline of ten days for  
3 requests for production.  
4 And I'd also like to set a deadline for  
5 expert reports, so that we don't go in blind on what --  
6 nobody goes in blind on what the experts are going to  
7 testify to. And I'd suggest that that should be like  
8 five days before the hearing.  
9 And the third thing is I'd ask when we do  
10 exchange exhibit and witness lists that we exchange  
11 exhibits, like thumb drives or, you know, making the  
12 exhibits available so we can see what other folks are  
13 using.  
14 DIRECTOR SPACKMAN: Any objection?  
15 All right.  
16 MR. THOMPSON: Just a quick note on the exhibit  
17 or, I guess, the exhibit reports. I would ask for  
18 seven days instead of five, because that pushes it  
19 through a weekend. I mean assuming it's May 30th for  
20 the seven days, that would be at least a week.  
21 DIRECTOR SPACKMAN: So exchange of expert  
22 reports on the same schedule as exchange of exhibits,  
23 disclosure of witnesses? That's fine with me.  
24 Okay. Other matters, Garrick.  
25 MR. BAXTER: Just for clarification, I think

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1 Sarah had indicated a deadline at ten days for requests  
2 for productions.  
3 Was that ten days from today to serve  
4 requests for production, or deadline of ten days before  
5 hearing? Sarah, what was your intent there?  
6 MS. KLAHN: Oh, my intent was that if one  
7 receives a request for production, one has ten days to  
8 comply with it. I hadn't thought about the other time  
9 frames.  
10 But I think we could say that discovery has  
11 to end by -- I don't know. My concern about the seven  
12 days for -- seven days before the hearing for expert  
13 reports is to the extent there is material -- if we're  
14 doing simultaneous disclosures of expert reports, I  
15 guess that just means that rebuttal will be live; is  
16 that right?  
17 DIRECTOR SPACKMAN: I see some heads nodding.  
18 MS. KLAHN: Thank you.  
19 DIRECTOR SPACKMAN: Other clarification?  
20 MR. BUDGE: Director, given the number of  
21 parties, I think it might be helpful to designate some  
22 deposition dates today.  
23 DIRECTOR SPACKMAN: Well, I think what -- what I  
24 would do if you want to work through that, TJ, if  
25 everybody's here -- I don't know that I need to sit



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1 through that, but we can stay online.  
2 What do you want to do, Garrick, and  
3 others?  
4 MR. BAXTER: At least for the Department's  
5 standpoint, because we don't have Jennifer here, we  
6 won't be able to identify her available dates. But we  
7 have Matt Anders here, so we could work with Matt while  
8 folks are on the line after we're done.  
9 DIRECTOR SPACKMAN: All right. Well, if there  
10 isn't anything else related, Garrick --  
11 MR. BAXTER: I'm sorry, I'm going to go back one  
12 more time.  
13 So Sarah started talking about discovery  
14 end date, and I don't think there was a date  
15 identified.  
16 Do the parties want a discovery end date?  
17 DIRECTOR SPACKMAN: Apparently not.  
18 MR. FLETCHER: This is Kent Fletcher.  
19 If we have to turn over exhibits and  
20 witnesses seven days before hearing, shouldn't that be  
21 the discovery end date as well?  
22 MR. BAXTER: You also have the ten-day deadline  
23 for people to comply with a request for production.  
24 And so if they serve it on that date and then have ten  
25 days, we've got a problem, but...

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1 MR. SIMPSON: [Unintelligible] complete it.  
2 MR. BAXTER: Okay. So somebody has to be taking  
3 that into consideration, the ten days.  
4 MR. SIMPSON: [Unintelligible] discovery sure.  
5 MR. BAXTER: We can do that.  
6 DIRECTOR SPACKMAN: Further clarification?  
7 [Unintelligible.]  
8 MR. HARRIS: Director, this is Rob Harris.  
9 In some recent scheduling orders I've had  
10 from hearing officers, there's -- in order to help  
11 premark exhibits, there can be kind of a bracket for  
12 the numbers that should be used by the parties.  
13 At this point I'm not sure we know who all  
14 the parties are because the deadline for filing a  
15 petition for hearing hasn't passed yet. But I'm  
16 wondering if there would be some merit in at least  
17 designating some exhibits so that they could be  
18 premarked for the hearing.  
19 MR. BAXTER: Director, why don't we address that  
20 in a scheduling order. We can identify premarked  
21 numbers and -- for various parties. And I think what  
22 we'll do is identify all the parties who are appearing,  
23 you know, in the contested case, and if they decide not  
24 to participate at the hearing, we just leave those  
25 numbers out.

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1 So we can go through and address that in  
2 the scheduling order.  
3 DIRECTOR SPACKMAN: Okay. Okay. Anything  
4 further?  
5 MR. BAXTER: Did you want to talk about  
6 curtailment for this year?  
7 DIRECTOR SPACKMAN: Oh, thank you. And I  
8 bypassed that. I should have mentioned it to begin  
9 with.  
10 So because this hearing has been scheduled,  
11 the Department -- the Director does not intend to issue  
12 a curtailment order until after the hearing.  
13 Okay. Anything further?  
14 MS. McHUGH: Director, this is Candice.  
15 Can I just clarify that statement.  
16 Does that mean until after the decision  
17 after the hearing?  
18 DIRECTOR SPACKMAN: Yes.  
19 MS. McHUGH: Okay.  
20 MR. FLETCHER: Director, this is Kent Fletcher.  
21 Does that apply as well to the pending 2022  
22 breach issue, or just the hearing on this matter?  
23 DIRECTOR SPACKMAN: Well, that's a good  
24 question, Kent.  
25 But, Garrick.

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1 MR. BAXTER: Director, at this point in time I  
2 don't think you have the record made before you with  
3 regards to a 2022 breach, so I don't know if there's  
4 anything for you to address.  
5 DIRECTOR SPACKMAN: Oh, I thought -- I thought  
6 he was referring to the 2021 breach.  
7 MR. FLETCHER: No. We submitted a joint report  
8 to the Director with IGWA reporting the Surface Water  
9 Coalition believes there is a breach. IGWA would not  
10 agree to the breach. And pursuant to the mitigation  
11 order, it's been up to the Director to take action.  
12 DIRECTOR SPACKMAN: Oh.  
13 MR. FLETCHER: That was filed a couple weeks  
14 ago.  
15 DIRECTOR SPACKMAN: Yes.  
16 MR. FLETCHER: Two or three weeks ago.  
17 DIRECTOR SPACKMAN: So I misunderstood. I'm  
18 sorry, Kent. Garrick was correct. You were referring  
19 to 2022.  
20 Well, I don't anticipate issuing a  
21 curtailment order for the 2022 breach prior to this  
22 hearing in issuance of an order.  
23 MS. McHUGH: Mr. Director, this is Candice again  
24 on behalf of McCain.  
25 In your As-Applied Order, you have until --

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1 in there it says junior groundwater users -- that's  
 2 me -- who have water rights junior to 1953 must submit  
 3 compliance, if you will, or a way to mitigate by  
 4 May 5th, and then it says that or the Director will  
 5 issue a curtailment order.  
 6 Does that May 5th date still stand, or will  
 7 that date be after the hearing for those that may need  
 8 to file mitigation? Or do we still have to comply with  
 9 the May 5th date?  
 10 DIRECTOR SPACKMAN: No, the May 5th date is  
 11 still an effective date. The As-Applied Order did not  
 12 set a date for issuance of the curtailment order.  
 13 And I'm just clarifying that I won't issue  
 14 the curtailment order until after the hearing and, as  
 15 you clarified, a decision is issued.  
 16 But those folks who are not -- who do not  
 17 have a mitigation plan had better hurry up, because I  
 18 think our processes may prevent them, honestly,  
 19 required processes in the conjunctive management rules  
 20 from putting together a mitigation plan.  
 21 And given what the Department has to do  
 22 under the rules in publishing and then allowing  
 23 opportunity for protest, I don't know whether a  
 24 mitigation plan can be put together. But I don't want  
 25 to start pushing dates back.

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1 Okay. Others?  
 2 Travis.  
 3 MR. THOMPSON: Mr. Director, just a quick  
 4 comment on that '22 breach and process.  
 5 So just to be clear, I think we have  
 6 pursued all avenues with the steering committee as far  
 7 as an impasse between IGWA and the Surface Water  
 8 Coalition, so I recognize any order or any date of  
 9 curtailment would happen after this scheduled hearing.  
 10 But I just want to make clear that I think  
 11 we've exhausted that process. IGWA has indicated that  
 12 they are going to appeal that decision, so that could  
 13 go to District Court. And whether there's a stay or  
 14 not, I guess it's up to them if they seek it.  
 15 But I think from our perspective we've run  
 16 the second addendum process through, and that letter  
 17 identified that.  
 18 DIRECTOR SPACKMAN: But you're talking about the  
 19 2022?  
 20 MR. THOMPSON: Correct, 2022.  
 21 DIRECTOR SPACKMAN: At least the assertion  
 22 there's a breach.  
 23 MR. THOMPSON: Yes.  
 24 DIRECTOR SPACKMAN: And not the 2021 related --  
 25 MR. THOMPSON: Right.

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1 DIRECTOR SPACKMAN: Because it's in front of me,  
 2 but I still have to review the information and make a  
 3 determination of whether there was a breach or not.  
 4 MR. THOMPSON: Yes.  
 5 DIRECTOR SPACKMAN: Yeah. Okay. All right.  
 6 Other matters?  
 7 All right. Let's conclude this -- the  
 8 formal pre-hearing conference.  
 9 (End of audio file.)  
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**REPORTER'S CERTIFICATE**

1  
 2  
 3 I, JEFF LaMAR, CSR No. 640, Certified Shorthand  
 4 Reporter, certify:  
 5 That the audio recording of the proceedings was  
 6 transcribed by me or under my direction.  
 7 That the foregoing is a true and correct  
 8 transcription of all testimony given, to the best of my  
 9 ability.  
 10 I further certify that I am not a relative or  
 11 employee of any attorney or party, nor am I financially  
 12 interested in the action.  
 13 IN WITNESS WHEREOF, I set my hand and seal this  
 14 3rd day of May, 2023.  
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**JEFF LaMAR, CSR NO. 640**  
 Notary Public  
 Post Office Box 2636  
 Boise, Idaho 83701-2636  
 My commission expires December 30, 2023

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**EXHIBIT A-46**

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 ) DOCKET NO.  
 IRRIGATION DISTRICT, AMERICAN ) CM-DC-2010-001  
 FALLS RESERVOIR DISTRICT #2, )  
 BURLEY IRRIGATION DISTRICT, )  
 MILNER IRRIGATION DISTRICT, )  
 MINIDOKA IRRIGATION DISTRICT, )  
 NORTH SIDE CANAL COMPANY, AND )  
 TWIN FALLS CANAL COMPANY )  
 \_\_\_\_\_ )

DEPOSITION OF MATTHEW ANDERS, P.G.

MAY 12, 2023

REPORTED BY:

ANDREA L. CHECK, CSR No. 748, RPR, CRR

Notary Public

Page 2

1 THE DEPOSITION OF MATTHEW ANDERS, P.G., was  
 2 taken on behalf of the Various Water Users, at the  
 3 offices of IDWR, located at 322 East Front Street, 6th  
 4 Floor, Boise, Idaho, commencing at 9:06 a.m., on  
 5 May 12, 2023, before Andrea L. Check, Certified  
 6 Shorthand Reporter and Notary Public within and for the  
 7 State of Idaho, in the above-entitled matter.

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24 Also Present:  
 25 Heather Rice

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1 A P P E A R A N C E S (Continued)  
 2  
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 6 Thane Kindred  
 7 Jaxon Higgs  
 8 Bryce Contor  
 9 Dave Shaw  
 10 Dave Colvin  
 11 Jay Barlogi,  
 12 Charles Brockway  
 13 Greg Sullivan  
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1 PROCEEDINGS

2

3 MATTHEW ANDERS, P.G.,

4 first duly sworn to tell the truth relating to said

5 cause, testified as follows:

6

7 MR. BAXTER: So, Sarah, before we get started

8 today -- and I understand we are on the record now --

9 I'd like to lay some foundation, similar to like I did

10 at our last deposition.

11 On May 5th, 2023, the Director issued an order

12 limiting the scope of discovery in this proceeding. He

13 precluded discovery regarding the Director's

14 deliberative process on legal and policy considerations.

15 As the Director discussed at the April 20th status

16 conference, he relied upon staff to help with technical

17 matters, so the Director has made staff available to

18 answer questions related to technical matters.

19 Please be aware that if counsel starts asking

20 questions about the Director's deliberative process on

21 legal and policy matters, I will object and instruct the

22 witness not to answer the question. Please also be

23 aware that the witnesses have been instructed not to

24 provide documents related to the Director's deliberative

25 process.

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1 So that's the foundation I wanted to lay this  
2 morning, Sarah. So I believe you're the one leading off  
3 today.  
4 MS. KLAHN: That's right.  
5 MR. BUDGE: Hey, Sarah, can I ask a quick  
6 question of Garrick?  
7 MS. KLAHN: Sure.  
8 MR. BUDGE: Garrick, could you define on the  
9 record what is encompassed in the deliberative process?  
10 MR. BAXTER: Well, TJ, generally, it's the --  
11 any information related to the communications with the  
12 Director related to his considerations of legal and  
13 policy issues and information that would have supported  
14 his decisions related to legal and policy issues.  
15 Now, please be aware, there might be other  
16 things that, as we go along, I identify that might also  
17 fall into that, but generally, I think that's a good  
18 starting point.  
19 MR. BUDGE: So you'll be instructing the  
20 deponent not to identify information that he shared with  
21 the Director if you consider that to be part of the  
22 deliberative process?  
23 MR. BAXTER: Yes.  
24 MR. BUDGE: Okay. Thank you.  
25 MS. KLAHN: Well, Garrick, since we're all

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1 starting out with this, I'll just say that we don't  
2 agree with that objection. And so I don't want you to  
3 think that I'm trying to be combative. We are going to  
4 create a record today that would support seeking some  
5 extraordinary relief from this kind of limitation. So I  
6 may ask questions that I understand you will object to,  
7 but it's in aid of creating that record so that we can  
8 take it up. So just so you know.  
9 MR. BAXTER: Understood.  
10 EXAMINATION  
11 QUESTIONS BY MS. KLAHN:  
12 Q. All right. Good morning, Mr. Anders.  
13 Could you state your name for the record,  
14 please.  
15 A. My name is Matt Anders.  
16 MR. BAXTER: And, Matt, you're going to have  
17 to speak up today.  
18 THE WITNESS: Louder? Were you able to hear  
19 me, or should I do it again?  
20 Q. (BY MS. KLAHN) No, no. I could hear you.  
21 And could you spell that, please?  
22 A. M-a-t-t, A-n-d-e-r-s.  
23 Q. Okay. Mr. Anders, have you had your  
24 deposition taken before?  
25 A. I have not.

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1 Q. Okay. So there are a few baseline rules. One  
2 is if you don't understand my question, please ask me to  
3 rephrase it or clarify. If you answer my question, I'm  
4 going to assume that you understood it.  
5 A second is one that Andrea referred to before  
6 we went on the record, which is: Let's try not to talk  
7 over each other. Sometimes in the heat of questioning  
8 that happens, but let's do our best not to do that.  
9 Because she'll yell at both of us, and we don't want  
10 that.  
11 The third thing is to make sure that if  
12 there's -- you know, if you need to take a break or  
13 something, you just need to ask to take a break, but  
14 there won't be any breaks while there's a question on  
15 the table. So you can't stop and confer with Garrick in  
16 the middle of a question or something like that. If you  
17 need to take a break, we will take a break after you  
18 finish answering the question.  
19 Does that make sense?  
20 A. Yes, I understand.  
21 Q. Mr. Anders, how long have you worked at the  
22 Department of Water Resources?  
23 A. I've worked -- I started in 2004, so I've been  
24 here a little over 18 years.  
25 Q. And can you just run through, quickly, what

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1 your different positions have been there?  
2 A. I started as a contractor in the GIS section.  
3 I worked as a hydrogeologist in the well section. I  
4 worked as a hydrologist in the hydrology section. And  
5 then I became a supervisor in the hydrology section.  
6 And I'm currently the technical services bureau chief,  
7 which is the supervisor of the hydrology and the GIS  
8 section.  
9 Q. Okay. Was your -- what degrees do you hold  
10 from college or higher education?  
11 A. I have a bachelor of arts in geology from  
12 Gustavus Adolphus College, and I have a master's of  
13 science in geology from Utah State University.  
14 Q. When did you graduate with your BA?  
15 A. 1992.  
16 Q. And when did you get your master's?  
17 A. 2003.  
18 Q. So right before you came to work for the  
19 Department?  
20 A. Yes, a couple of years before I came.  
21 Maybe -- yeah, just a couple years.  
22 Q. And what did you do between '92 and 2000 --  
23 and starting your -- what did you do between undergrad  
24 and graduate school?  
25 A. I worked as an environmental specialist for an



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1 Indian tribe for a couple of years. I went in the Peace  
2 Corps and was in Kazakhstan for two years. I worked in  
3 consulting for a couple of years.  
4 MS. KLAHN: Okay. Andrea, could you hand the  
5 witness -- or whoever is handling the deposition  
6 exhibits -- could somebody hand the witness the joint  
7 notice of deposition duces tecum.  
8 COURT REPORTER: Yeah, just a second.  
9 MS. KLAHN: It will be Exhibit 1.  
10 MS. McHUGH: Sarah, do we want to have our  
11 deposition exhibits be chronological from Jennifer's or  
12 do you want to have brand-new numbers for this  
13 deposition?  
14 MS. KLAHN: I don't know. I'm open. What do  
15 you think?  
16 MS. McHUGH: I think it makes sense to have  
17 them not have duplicate exhibit numbers. So I think we  
18 would end with the last exhibit in Jennifer's, which  
19 I'll have to look up here real quick.  
20 MS. KLAHN: Well, I think Andrea has them  
21 there.  
22 So, Andrea, can you label this as the next  
23 consecutive number after the last exhibit we marked at  
24 Jennifer Sukow's deposition, please.  
25 COURT REPORTER: Yeah, I believe it's 10.

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1 ([Exhibit 10](#) marked.)  
2 Q. (BY MS. KLAHN) Matt, have you been handed  
3 what's been marked [Exhibit No. 10](#)?  
4 A. Yes.  
5 Q. Could you identify this document, please?  
6 A. It says, "Document No. CM-DC-2010-001 Joint  
7 Notice of Deposition Duces Tecum of Matthew Anders P.G."  
8 Q. Okay. And then if you'd turn to page -- well,  
9 first of all, have you seen this document before?  
10 A. Yes, I have.  
11 Q. Could you turn to page 4.  
12 A. Okay.  
13 Q. Who showed you this document?  
14 A. I was provided it by legal counsel.  
15 Q. Did you talk about the contents of this  
16 document with legal counsel?  
17 A. Yes.  
18 Q. So let's look at the list starting on page 4.  
19 And what I'm going to ask you is simply whether you  
20 produced any materials related to each of these  
21 enumerated paragraphs. I'm going to start with that,  
22 and then we'll come back to asking questions about them.  
23 I just want to know what you might have brought with  
24 you.  
25 So the first paragraph relates to "All

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1 documents, memoranda, reports, analyses or notes relied  
2 on by the Department to prepare the December 23rd, 2022,  
3 recommendations related to the technical work group."  
4 Do you have an understanding of what that  
5 universe of documents would be?  
6 A. Yes.  
7 Q. Did you bring any documents that are  
8 responsive to that?  
9 A. I did provide documents.  
10 Q. You've brought them with you?  
11 A. Did I? I don't know. I provided them to  
12 legal counsel. I don't know where they are.  
13 Q. Oh, okay.  
14 MR. BAXTER: So, Sarah, just to help out with  
15 regards to this one: Matt, the Department has provided  
16 documents that were uploaded to IDWR's website. Are  
17 those the documents that you're discussing that are as  
18 it outlines on here: "Notes relied on by the Department  
19 to prepare the December 23rd, 2022, Summary of  
20 Recommended Technical Revisions to the 4th Amended Final  
21 Order Regarding Methodology For Determining Material  
22 Injury to Reasonable in-Season Demand and Reasonable  
23 Carryover for the Surface Water Coalition"?  
24 THE WITNESS: I guess I'm confused. I  
25 provided two sets of documents. I don't know where they

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1 went or what -- do you know what I mean? When you say  
2 they're uploaded, I didn't upload them. I don't know.  
3 MR. BAXTER: Are they available on the  
4 website?  
5 THE WITNESS: I think so.  
6 Q. (BY MS. KLAHN) Okay. Those would have been  
7 provided in advance of our deposition today, I assume;  
8 correct?  
9 A. Yeah.  
10 Q. Okay. Did you bring anything in addition to  
11 whatever you've previously provided to be uploaded on  
12 the website?  
13 MR. BAXTER: Now, Sarah, not to jump in, but,  
14 Matt, let me help out here.  
15 THE WITNESS: Okay.  
16 MR. BAXTER: I believe you had identified  
17 documents that were responsive to some of these  
18 questions, and I had provided them on a thumbdrive here.  
19 And we can open those up and show those documents to  
20 everybody here in the room and online, but are those  
21 responsive to -- the documents that you provided me last  
22 night, are those responsive to this particular question?  
23 THE WITNESS: Yes. That was my confusion,  
24 what documents were which, were we talking about. Yes,  
25 what I provided you is responsive to this. What threw

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1 me off was the question: Are they on the webpage or  
2 have they been provided? I don't know.  
3 MR. BAXTER: Okay. Fair enough.  
4 MS. KLAHN: Garrick, maybe during a break you  
5 could -- are there a lot of documents? How many are we  
6 talking about?  
7 MR. BAXTER: So there's two caches of  
8 documents. They're the documents that we've previously  
9 posted to the website that were provided with regards to  
10 the notice. And then Matt has identified additional  
11 documents that are responsive, it's my understanding, to  
12 some of these questions. And we have them on a  
13 thumbdrive here, and we can pull them up and do a share  
14 screen, and he can walk through those documents with  
15 folks as -- it's my understanding, as we get to a  
16 question that it's responsive to that particular  
17 question.  
18 MS. KLAHN: So are we talking about a lot of  
19 documents that would have been things we haven't seen  
20 before?  
21 MR. BAXTER: A fair number. And, you know,  
22 they're like Excel spreadsheets. Matt also prepared  
23 some notes for himself with regards to his testimony  
24 here today, that those are included as well. And an  
25 email with regards to those notes should be going out

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1 here -- there it is finally. Actually, an email with  
2 regards to those notes just went out to the parties.  
3 MS. KLAHN: Okay. Very good. Thank you.  
4 MR. SIMPSON: Excuse me. Sarah, if I could,  
5 this is John. Just to clarify, when you say "notes," is  
6 that everything on the thumbdrive? Is that what you're  
7 saying?  
8 MR. BAXTER: There are other things on the  
9 thumbdrive. For example, Excel spreadsheets, which are  
10 so large we --  
11 MR. SIMPSON: Couldn't put those in an email?  
12 MR. BAXTER: Yeah.  
13 MR. SIMPSON: All right. Sorry, Sarah.  
14 Thanks.  
15 MS. KLAHN: Oh, no, that's okay.  
16 Q. (BY MS. KLAHN) Well, let's keep going through  
17 the list, and then we'll take a second to think about  
18 how to evaluate the materials that you've brought along  
19 that are new.  
20 All right. So the second paragraph refers to  
21 "documents, memoranda, reports, notes related to the  
22 Department's decision to exclude from the Fifth  
23 Methodology Order: Near Real Time METRIC for  
24 determining Crop Water Need; April and July Regressions  
25 used to predict natural flow supply."

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1 Are any of the materials that Garrick was just  
2 talking about on that thumbdrive responsive to paragraph  
3 No. 2?  
4 A. Yes.  
5 Q. Okay. Paragraph No. 3, any documents  
6 responsive to the Department's decision to include  
7 transient modeling in the Fifth Methodology Order?  
8 A. No, I did not provide anything. That would be  
9 from Jennifer Sukow.  
10 Q. Okay. Paragraph 4, "documents, memoranda,  
11 reports, analyses, or notes related to the Department's  
12 review of information submitted by Greg Sullivan and/or  
13 Spronk Water Engineers to IDWR and the Technical Work  
14 Group in late 2022 and early 2023."  
15 Are any of the documents you brought with you  
16 today related to the Department's review of that  
17 information?  
18 A. Yes.  
19 Q. Okay. Paragraph 5, the same category except  
20 relating to information submitted by Sophia Sigstedt for  
21 IGWA?  
22 A. Yes.  
23 Q. Paragraph 6, "documents or memoranda, reports,  
24 analyses, reports related to other potential Baseline  
25 Year(s) for use in the Fifth Methodology Order other

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1 than the 2018 baseline year?"  
2 A. Yes.  
3 Q. "All documents, memoranda, analyses, or notes  
4 related to the authorized and actual irrigated area of  
5 the Surface Water Coalition members?"  
6 A. Yes.  
7 Q. Any documents?  
8 A. Yes. Sorry.  
9 Q. That's okay. "All documents, memoranda,  
10 reports, analyses, or notes related to SWC member  
11 groundwater pumping and other sources of water available  
12 to the SWC members?"  
13 A. For the first half of that, the SWC member  
14 groundwater pumping, we're working on gathering  
15 materials for that. For the second half of that, the  
16 other sources of water available, it's unclear to me  
17 what is being sought.  
18 Q. Okay. Basically, because the district court  
19 and Supreme Court decisions that form the framework for  
20 the methodology -- I'll ask you to accept this. I know  
21 you're not a lawyer -- but the source of this question  
22 is what we understand to be the legal framework for the  
23 methodology order, and that includes the Director's  
24 obligation to evaluate whether the Surface Water  
25 Coalition is using sources other than their decreed

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1 surface water rights to satisfy irrigation. And that  
2 would -- considering those sources would, potentially,  
3 reduce the amount of surface water required or to meet  
4 irrigated demand.  
5 So I don't know if there's any other sources  
6 than groundwater and surface water. I understand your  
7 confusion about the last half of that, but that's what  
8 that was getting at.  
9 Does that make sense?  
10 A. I think so.  
11 Q. Okay. With that explanation, do you think  
12 there's any other information that you're aware of which  
13 would be responsive to this that would be in addition to  
14 the materials that you said you're gathering related to  
15 groundwater pumping of Surface Water Coalition members?  
16 A. Can you repeat the question?  
17 Q. Yes. So with that explanation, do you think  
18 there's any other information you're aware of which  
19 would be responsive to the second half, I'll call it, of  
20 paragraph 8 that would be materials in addition to what  
21 you're gathering related to groundwater pumping of  
22 Surface Water Coalition members?  
23 A. Possibly. I don't know exactly everything the  
24 Department has. We may have something that would be  
25 related to the second half.

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1 Q. Okay. What would that be, in general terms?  
2 A. I guess I'm thinking groundwater-related water  
3 rights or things like that, or I think -- that indicate  
4 if there are groundwater rights within the place of use  
5 of the Surface Water Coalition. That's what I'm  
6 thinking of. We likely have something like that.  
7 Exactly what it is, I'm not sure.  
8 Q. Okay. At this time, is there any effort being  
9 made to identify and collect that material, do you know?  
10 A. Not yet, no.  
11 Q. No. 9, "All documents, memoranda, reports,  
12 analyses, or notes related to the analysis of reasonable  
13 carryover for the SWC members"?  
14 A. I have provided everything that is not related  
15 to the deliberative process of the Director.  
16 Q. Okay. And when you say you've provided, it's  
17 on the thumbdrive that Garrick referenced?  
18 A. Yes. Sorry, yes.  
19 Q. Paragraph 10, "materials presented at  
20 technical meetings, all analyses, reports, data sets, or  
21 other materials evaluated, examined, or developed in  
22 connection therewith," referring back to paragraph 9. I  
23 think it's an extension of paragraph 9.  
24 The same answer?  
25 A. Yes, I have provided documents, except for

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1 those related to the Director's deliberative process.  
2 Q. Okay. Let me just stop there and ask about  
3 that.  
4 So when you say you have not provided  
5 documents related to the Director's deliberative  
6 process, are you aware that there are such documents?  
7 A. Related to his deliberative process?  
8 Q. Yes.  
9 A. There are documents, yes.  
10 Q. Okay. And were those documents created by  
11 members of the Department or members -- employees of the  
12 Department?  
13 A. Yeah, I think that's all internal people  
14 working on that stuff.  
15 Q. And those were materials that were developed  
16 during the course of the -- from the time of the  
17 Director's announcement last fall in 2022 that he was  
18 going to update the Fourth Methodology Order until the  
19 time that the Fifth Methodology Order was released,  
20 would that be the time frame in which those documents  
21 would have been created?  
22 A. Sorry, I'm rereading the question. Yeah, I  
23 believe that is the correct time frame.  
24 Q. Okay. Do you have realtime there?  
25 A. What do you mean "realtime"?

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1 Q. Do you have the transcript? You can see the  
2 transcript in front of you?  
3 A. I have a paper copy of the order.  
4 Q. Oh, of [Exhibit 10](#)?  
5 A. Yes. That's what I'm looking at, yes.  
6 Q. You said you were rereading the question, so I  
7 was just wondering if you were --  
8 A. Oh, I'm sorry, I'm rereading the order.  
9 Q. No, that's okay. You could very well have the  
10 realtime transcript there, so that's fine. I do.  
11 That's how come I could reread you the question a minute  
12 ago.  
13 All right. Paragraph 11, "All documents,  
14 memoranda, reports, analyses of an average of multiple  
15 years for consideration on the Base Line Year(s) and  
16 associated hindcast in the Base Line Year(s) shortfall."  
17 Are there any materials like that on the  
18 thumbdrive?  
19 A. Yes. I provided materials except for the  
20 materials that are part of the Director's deliberative  
21 process.  
22 Am I talking loud enough?  
23 Q. I can hear you, yeah.  
24 A. I feel like I'm really quiet. I'll do better.  
25 THE WITNESS: Can you hear me?

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1 COURT REPORTER: I can hear you, but you are  
2 quiet.  
3 THE WITNESS: I will do better. It seems like  
4 I'm -- okay.  
5 Q. (BY MS. KLAHN) I have an ear infection, so I  
6 can't hear out of the left side of my head anyway, and  
7 I'm afraid I'm shouting. So if I'm too loud, tell me.  
8 Paragraph 12, "All court filings that discuss,  
9 review, analyze, or identify areas of the methodology  
10 that require further technical analysis."  
11 MR. BAXTER: Sarah, I'm going to object to  
12 this request. It's vague and ambiguous and does not  
13 relate to the factual or technical basis for the Fifth  
14 Methodology Order or the as-applied order, but relates  
15 to the Director's legal conclusions made in those  
16 orders.  
17 Furthermore, the Fifth Amended Methodology  
18 Order directly addresses this issue and addresses these  
19 particular -- this question. Thus, staff has been  
20 instructed to not provide documents related to this  
21 request.  
22 MS. KLAHN: Can I ask, are there documents  
23 that would be responsive to this request?  
24 MR. BAXTER: You're asking for all court  
25 filings, and we're not sure exactly -- again, I'm still

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1 trying to understand the question itself, but we haven't  
2 further analyzed it beyond that, no.  
3 Q. (BY MS. KLAHN) No. 13, "documents, memoranda,  
4 reports, analyses or notes related to any analysis in  
5 the intervening years from the 2015 technical work group  
6 to the 2022 technical work group that's related to the  
7 Fifth Methodology Order"?  
8 A. Yeah, I provided all documents that we have  
9 that aren't related to the Director's deliberative  
10 process.  
11 (Interruption.)  
12 MS. KLAHN: Hey, Chuck, can you put it on  
13 mute?  
14 Q. (BY MS. KLAHN) Okay. "All documents,  
15 analyses, reports -- I'm on paragraph 14 -- "All  
16 documents, analyses, reports, data, or other materials  
17 evaluated, examined or developed in connection with, or  
18 related to, the Department's determination and reasoning  
19 to use steady state modeling in the previous as applied  
20 orders"?  
21 A. I did not provide any documents. That would  
22 be from Jennifer Sukow.  
23 MS. KLAHN: Okay. Garrick, in the interest of  
24 efficiency, is it possible for you to email like the  
25 titles or the directory of documents?

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1 I mean, if there's 200 documents on that  
2 thumbdrive, that doesn't seem like something that we're  
3 going to be able to get through efficiently today. If  
4 there's five, that's a whole other matter. If you can  
5 email around the names of the documents, it might be  
6 possible for somebody to do a little bit of triaging,  
7 and we could focus on a few of them in a productive  
8 manner.  
9 MR. BAXTER: Sarah, this is Garrick. I think  
10 what might be helpful is just to refresh Mr. Anders'  
11 recollection as to what documents he has previously  
12 provided and were posted to IDWR's website, start there  
13 so that he knows the documents that have been directly  
14 already provided to the parties.  
15 THE WITNESS: Okay.  
16 MR. BAXTER: And then I think it would be  
17 helpful for us to share the screen, and we can go in and  
18 show what is on the directory of the thumbdrive so that  
19 you can see the scope of the particular items.  
20 You know, for example, one of the questions  
21 relates to the analysis that he undertook for Greg  
22 Sullivan's information that he provided. I think easily  
23 today we could go into that, and he could show you  
24 documents related to that as we move through the  
25 questions.

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1 So that's just one example of an area where I  
2 think we can kind of talk through them. And if we need  
3 to -- some of these documents -- let me say it this way,  
4 his notes we have provided to you individually. That's  
5 part of what's in here. A lot of what's in here,  
6 though, is spreadsheets, as you might imagine, given the  
7 technical nature of this.  
8 And so let's take a look at it and kind of  
9 evaluate and go from there once you have a chance to see  
10 what's on the thumbdrive. But let's go off for record  
11 for a second and let me show Matt -- refresh his  
12 recollection as to what's on the website.  
13 MS. McHUGH: May I offer a suggestion before  
14 we go off the record?  
15 MS. KLAHN: Yes.  
16 MS. McHUGH: In order to just assist the  
17 parties and all of us for a clean record, would it be  
18 possible to mark as an exhibit just the list of  
19 documents, like Sarah was saying, and then we have that  
20 as an exhibit, and then Matt, I agree, off the record  
21 can look at that, and he can say "On Exhibit," whatever  
22 the number is -- mark what ones he has so we know what  
23 we're talking about. If it's just on the screen, we  
24 don't have anything to refer back to.  
25 Does that make sense?

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1 MS. KLAHN: That's a good idea.  
2 MR. BAXTER: I understand what you're saying  
3 Candice, but I think when you take a look at what's on  
4 the thumbdrive, you'll see that it's organized by  
5 folders, and so it doesn't lend itself to an easy list  
6 of document by document. So let's take care of --  
7 MS. KLAHN: Let's go off the record and take a  
8 look at -- let's try Garrick's approach first. I like  
9 the idea, though, of trying to create some kind of paper  
10 record of what we're actually talking about so that we  
11 could, again, be efficient as we move through this  
12 stuff.  
13 MR. BAXTER: Sounds good. Are we off the  
14 record?  
15 COURT REPORTER: Off the record.  
16 (Discussion held off the record.)  
17 Q. (BY MS. KLAHN) So the parties went off the  
18 record in order to discuss the thumbdrive that  
19 Mr. Anders brought to the deposition, and the thumbdrive  
20 contains a number of folders organized by topic.  
21 And the folders are "Baseline Year," "Crop  
22 Water Need," "Forecast Supply," "Irrigated Acres," "The  
23 METRIC," "Project Efficiency," "Reasonable Carryover,"  
24 "System Volume Information," "Twin Falls Canal Company  
25 Increase in Diversion." There's a Word document called

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1 "Deposition Preparation Topics Version 1." And then  
2 there's the Matt Anders' notice. That's what seems to  
3 be on the menu, if you will, of the thumbdrive.  
4 And the -- at this point -- oh, in addition,  
5 we received an email from somebody at the Department at  
6 9:20 a.m. Mountain Time, which contained documents also  
7 that are responsive to the subpoena. And so we may work  
8 from those today, or we may not, depending on if we have  
9 time to process the information in between things.  
10 And, Garrick, as I understand it, you've  
11 offered to leave the deposition open so that we could  
12 come back and ask Mr. Anders about some of these things?  
13 MR. BAXTER: Yes.  
14 MS. KLAHN: Okay.  
15 Q. (BY MS. KLAHN) Let's go now to my outline,  
16 which doesn't have anything about this on it because I  
17 didn't know.  
18  
19 THE WITNESS: Do we want to stop sharing?  
20 MR. BAXTER: She didn't ask.  
21 Q. (BY MS. KLAHN) Can you take that down from  
22 the share screen?  
23 A. That was my question, did you want to stop  
24 sharing? Okay.  
25 Q. Yes, please.

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1 A. All right. We're back.  
2 Q. Great, thanks. Mr. Anders, we talked a little  
3 bit about your different roles at IDWR, and I wanted to  
4 ask you in more general terms, since you've -- in your  
5 experience in life, generally, do you have any  
6 experience with irrigation, operating an irrigation  
7 system?  
8 A. No.  
9 Q. Have you ever done any technical analyses  
10 related to irrigation?  
11 A. Could you clarify the question?  
12 Q. Yes. So, for example, and I suspect if you  
13 don't have any experience with irrigation, this answer  
14 may also be you don't have any experience with this, but  
15 irrigation analysis could include things like  
16 scheduling, irrigation scheduling, setting up an  
17 irrigation system, different things that would be  
18 related to implementing irrigation, even if you're not  
19 the actual guy who's turning on the faucet.  
20 Do you have any experience with that?  
21 A. I do not.  
22 Q. Could you describe your experience with water  
23 rights administration?  
24 A. Since 2014, I've been working -- I'm sorry,  
25 I'll speak louder -- in the hydrology section I work on

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1 the water right accounting program for the Bear, the  
2 Boise, the Big Lost. That is all water right accounting  
3 administration.  
4 Q. Are you familiar with Water District 01's  
5 accounting program?  
6 A. I am. I do the coding for that, and I do the  
7 technical support for data for them, for Water District  
8 1.  
9 Q. And then describe your experience with  
10 conjunctive administration, conjunctive water  
11 administration?  
12 A. I do not have any experience with conjunctive  
13 administration. Most of the water right accounting  
14 programs are surface water only.  
15 Q. How do you define "conjunctive  
16 administration"?  
17 A. I think I would define it as either curtailing  
18 water rights, groundwater and surface water rights, as a  
19 group based on priority date.  
20 Q. Do you have any experience with groundwater  
21 modeling?  
22 A. When I worked in the well section, I worked on  
23 a subgroup of wells called "injection wells." I did  
24 some modeling with a software called WhAEM there, which  
25 is wellhead-protection type of software.

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1 Q. And you just, I think, described for me your  
2 knowledge of Water District 01 accounting, but just to  
3 make it a clean record, what are all the different  
4 things that you're aware of related to -- I'm sorry,  
5 what is your experience and knowledge related to Water  
6 District 01 accounting?  
7 A. As I stated, I do their tech support in terms  
8 of if they have potential changes to the water right  
9 accounting, I may test that for them. If they have bugs  
10 or errors in accounting, I go in and talk to them and  
11 work out a solution.  
12 I also manage their databases, so if -- their  
13 database, I should say -- that they use to prepare data  
14 to put into accounting. So mostly it's a tech support  
15 role is what I do for Water District 1.  
16 Q. Who do you work with when you are assisting  
17 them? What individuals up at the Water District 1  
18 office?  
19 A. I work with Tony Olenichak, I work with Craig  
20 Chandler, Travis Soderquist, and Amanda. I have  
21 forgotten Amanda's last name.  
22 Q. Sawyer; is that right?  
23 A. That doesn't sound correct.  
24 Q. Okay.  
25 A. Sorry, I feel really bad.

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1 MR. SIMPSON: Fowler.  
2 THE WITNESS: Fowler. Somebody said Fowler in  
3 the room. That is her.  
4 Q. (BY MS. KLAHN) Fowler, thank you. I knew  
5 there was a "W" in there.  
6 And today, of course, we're here because the  
7 Director issued the Fifth Methodology Order. Can you  
8 give me, in a general sense, the areas of knowledge that  
9 you are familiar with related to the Fifth Methodology  
10 Order?  
11 And I believe the methodology order is sitting  
12 next to Andrea, so we could ask her to hand that to you,  
13 if it would be helpful for you to look at it.  
14 A. I am familiar with all parts of the  
15 methodology order. The way we have it broke down as  
16 staff is that we always have two staff members working  
17 on the calculations, but we're both familiar with all  
18 parts of the methodology order. We have our specialties  
19 and the calculations that we focus on that we're better  
20 at, you know, but we are familiar with them.  
21 Q. So when you say you have two staff people  
22 working on all of the calculations, do you have one  
23 person who you work with all the time on  
24 methodology-order-related things, or are there multiple  
25 people who might form the other part of that two-person

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1 team?  
2 Does that make sense?  
3 A. Yes. So I should clarify a bit there. We  
4 have one person that works on the demand portion of the  
5 calculations, and then one person that works on the  
6 supply.  
7 Q. Okay.  
8 A. And then if there is a shortfall, then there's  
9 others at the Department who become involved, like  
10 Jennifer Sukow and other people in our administration if  
11 there's a curtailment. So we bring other people in as  
12 we need. But the general calculations described in the  
13 order are primarily done by two people.  
14 Q. Who are those two people?  
15 A. I work on the demand side. Kara Ferguson  
16 works on the supply side.  
17 Q. And when you said you have two people working  
18 on all calculations, are you and Kara then sort of  
19 backstopping each other, or do you have another  
20 assistant, someone else who's helping you?  
21 A. No. Primarily with the calculations, it's --  
22 we each do our portion, and we consult each other when  
23 we have questions, we're aware of what the other one is  
24 doing, and then we also do quality assurance on each  
25 other's calculations.

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1 Q. And you've used the word "calculations" a  
2 number of times now. Could you give me an example of a  
3 calculation on the demand side?  
4 A. So, for example, when we're calculating crop  
5 water need, we are looking at crop mix, we're  
6 calculating the crop mix from the crop data layer, we're  
7 looking at -- we're collecting ET data, we're adjusting  
8 it for precipitation. All of this is done in Excel  
9 files and are calculations that we're building to get to  
10 the demand.  
11 Q. Okay. So you've worked -- I didn't keep good  
12 track when you were telling me about your history at the  
13 Department.  
14 In which position were you first involved in  
15 the Surface Water Coalition delivery call?  
16 A. In 2014 I moved to the hydrology section from  
17 the well section as a hydrologist. And in 2014, I  
18 started working on the Surface Water Coalition.  
19 Q. So in 2014, that would have been right before  
20 the convening of the technical work groups in 2015; is  
21 that right?  
22 A. Correct. I started in like August or  
23 September, and the technical working group, I think,  
24 convened in early 2015 and had several meetings.  
25 Q. So can you describe your involvement in the

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1 2015 technical work group?  
2 A. I presented on an updated version of  
3 calculating ET. We -- at that point, we were using  
4 countywide data, and we proposed a new method to use,  
5 what we eventually adopted, which was using AgriMet  
6 data.  
7 So I talked about how that -- what the new  
8 method would be or proposed it to the technical working  
9 group. I also looked at some -- I think I presented on  
10 reasonable in-season demand as well, looking at possible  
11 ways to calculate that, some alternatives. We did not  
12 implement that. There may have been other topics, but  
13 that's what I remember.  
14 Q. The 2015 technical work group, was that led by  
15 Liz Cresto?  
16 A. Yes.  
17 Q. And so after the technical work group in 2015  
18 developed its recommendations, those were announced, and  
19 the Director had those available to him, and he then  
20 issued the Fourth Methodology Order.  
21 Do you have a sense of the connection between  
22 those two events? Like, was the Director waiting for  
23 the technical work group recommendations to issue the  
24 Fourth Methodology Order, or were they parallel  
25 processes?

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1 A. What I remember is the technical working group  
2 issued a memo, a technical memo. I think Liz Cresto and  
3 I wrote -- I mean, it was under our name to the  
4 Director. Yeah, I think it was that he was waiting to  
5 review that memo and then proceed with the update as the  
6 Fourth -- that would have been the Third Amended  
7 Methodology at that point.  
8 Q. I think it was the Fourth? No?  
9 A. I think that the Third came out in 2015, and  
10 then we did a small amendment -- well, a small edit and  
11 Four came out in 2016.  
12 Q. Oh, okay. And was that a change in acres?  
13 A. In the '16 edit?  
14 Q. Yeah.  
15 A. I don't remember.  
16 Q. Okay. Then we fast forward for six years to  
17 -- the bad thing about working at home is you have to  
18 look out the window and see what people are doing.  
19 Sorry about that -- so then we fast forward six years to  
20 2022 and the technical work group process.  
21 When did staff start working on the technical  
22 work group questions, I guess, if you will?  
23 A. Could you clarify?  
24 Q. Well, my understanding is that -- this is just  
25 my understanding, so I'm trying to understand if it's

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1 correct -- my understanding is that staff, IDWR staff  
2 started thinking about this technical work group process  
3 sometime in August or September of 2022. And then the  
4 Director, in October of 2022, announced that there would  
5 be such an event at a status conference or something  
6 connected to the Surface Water Coalition delivery call  
7 matter.  
8 And so I'm wondering if -- let me ask it this  
9 way: The first time the parties were aware that there  
10 was going to be a technical work group was when the  
11 Director announced that at the status conference.  
12 Was staff aware that there would be a new  
13 technical work group before the status conference or did  
14 you learn on the same day the rest of us did?  
15 A. I think that I knew it was being contemplated  
16 by the Director. I wasn't sure if he was going to go  
17 that way to have a technical work group.  
18 Q. So you didn't start working -- you and Kara  
19 didn't start working in August or September to prepare  
20 topics or, you know, questions or anything that you were  
21 going to work through with the technical work group?  
22 A. We review -- we did review and were talking  
23 with the Director about the possible need to look at  
24 some of the topics, some of the calculations, and that  
25 would have been before he notified.

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1 Q. If I can say it this way: The staff was the  
2 source of the Director's decision? You said to him,  
3 "Hey, we should think about doing this," he went off and  
4 thought about it, did his little deliberative process,  
5 and made a decision.  
6 Is that a fair statement of the train of  
7 events?  
8 MR. BAXTER: Objection. I think that  
9 improperly characterizes the witness's earlier  
10 testimony.  
11 MS. KLAHN: Well, that's why I asked him if it  
12 was a fair statement.  
13 Q. (BY MS. KLAHN) Please correct where I  
14 misstated.  
15 A. Could you read back what you stated?  
16 Q. You bet. So if I can say it this way: The  
17 staff was the source of the Director's decision to move  
18 forward with the technical work group?  
19 Essentially, you said to him, "Hey, we should  
20 think about this issue, and this issue, and this issue.  
21 Maybe we need to start doing a technical process with  
22 the parties." He went and thought about it, announced  
23 it in October; is that a fair statement?  
24 MR. BAXTER: Objection; leading question.  
25 Matt, go ahead and answer the question,

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1 though.  
2 THE WITNESS: We communicate with the Director  
3 about, you know, our reviews of the methodology. What  
4 he ultimately decides or how he goes about that, I don't  
5 know.  
6 Q. (BY MS. KLAHN) So a couple questions ago you  
7 said, "We did review and were talking with the Director  
8 about the possible need to look at some of the topics,  
9 some of the calculations?"  
10 A. That is correct.  
11 Q. Do you recall that?  
12 A. Yep, I do remember that.  
13 Q. When were you talking with the Director about  
14 the possible need to look at some of the topics or some  
15 of the calculations?  
16 A. I would guess, just estimate, late summer we  
17 were talking about -- thinking about some of this. We  
18 need to review some of this, the methods.  
19 Q. Now, in terms of initiating the technical work  
20 group, do you know -- this is just a do you know  
21 question -- do you know if the Department provided  
22 notice of the technical work group to entities beyond  
23 those who were involved in the Surface Water Coalition  
24 delivery call?  
25 A. The question again, please?

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1 Q. Do you know if the Department provided notice  
2 of the technical work group that was going to be forming  
3 to entities beyond those who are involved in the Surface  
4 Water Coalition delivery call?  
5 A. I don't know.  
6 Q. Do you know if the Department considers the  
7 technical work group to be a formal part of any process  
8 to update the methodology order?  
9 A. I don't know.  
10 Q. In 2016 you mentioned that there was a small  
11 update to the methodology order, which I think we talked  
12 possibly was related to the acres.  
13 A. I can't remember whether there was a minor  
14 update compared to the -- the third amendment had a lot  
15 of changes to it. All I remember is that the fourth  
16 amendment was minor, and I don't remember what it was  
17 that was updated.  
18 Q. And was there any technical work group formed  
19 before the fourth amendment?  
20 A. No.  
21 Q. Do you know what the Department hoped to  
22 achieve in conducting the technical work group in 2022?  
23 A. Yes.  
24 Q. What was that?  
25 A. My interpretation -- yeah, my interpretation

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1 of what we were trying to achieve -- or the Department  
2 or the Director was trying to achieve, was to inform the  
3 technical staff of the parties, this is what we're  
4 reviewing, these are the things we've looked at, these  
5 are our results, and to get feedback from them, the  
6 technical staff.  
7 Q. So if I can -- tell me if this restatement is  
8 correct, so you wanted to share the work you'd been  
9 doing internally and get feedback on that work related  
10 to the Fourth Method -- any updates to the methodology  
11 order; is that right?  
12 A. Yeah, I think that's accurate.  
13 Q. Do you believe that goal was achieved?  
14 A. We did provide the information, and we did get  
15 feedback. Yes, I believe it was achieved.  
16 MS. KLAHN: Let's look at the December 23rd,  
17 2023, Department recommendations related to revisions to  
18 the Fourth Amended Methodology Order. And that's going  
19 to be [Exhibit 11](#), I think, Andrea.  
20 COURT REPORTER: So give me just a second to  
21 mark it.  
22 MS. KLAHN: You bet.  
23 MR. BUDGE: Sarah, are you referring to the  
24 one-page summary issued in December of last year?  
25 MS. KLAHN: Yeah. It has an unreasonably long

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1 title, so I was circling it.  
2 MR. BUDGE: I think that was Exhibit 4 from  
3 Jennifer.  
4 MS. KLAHN: Oh, I apologize. Okay.  
5 If it's not too late, Andrea, you can just  
6 pull out Exhibit 4.  
7 COURT REPORTER: It's not too late, because I  
8 wasn't sure which one you were talking about. I hadn't  
9 found it yet, so I'll just give him Exhibit 4.  
10 MS. KLAHN: Fair enough. Thank you.  
11 THE WITNESS: Okay. I have Exhibit 4.  
12 Q. (BY MS. KLAHN) Could you identify Exhibit 4,  
13 including it's -- with it's unreasonably long title, for  
14 the record?  
15 A. It says, "Summary of Recommended Technical  
16 Revisions to the 4th Amended Final Order Regarding  
17 Methodology for Determining Material Injury to  
18 Reasonable in-Season Demand and Reasonable Carryover for  
19 the Surface Water Coalition, dated 12-23-22. By: Kara  
20 Ferguson, Staff Hydrologist & Matt Anders, Hydrology  
21 Section Supervisor."  
22 Q. Who was involved in developing these  
23 recommendations that are contained in Exhibit 4.  
24 A. I think, ultimately, Kara and I wrote the  
25 first draft.



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1 Q. Who else provided input?  
2 A. Once we write the draft, our process is to  
3 hand it to legal counsel and then the Director.  
4 Q. Is this Exhibit 4 in this -- is it the same  
5 document that you submitted to legal counsel or were  
6 there edits made?  
7 A. Most likely there were edits made.  
8 Q. This may be a place where we want to go to the  
9 thumbdrive.  
10 Could you identify the information that was  
11 considered that had been supplied by the parties in the  
12 technical work group process?  
13 A. Could you restate that?  
14 Q. Yes. Could you identify the information that  
15 you considered in developing your draft of Exhibit 4?  
16 And I'm saying maybe we want to go to the  
17 thumbdrive if there's a compilation of that there. I  
18 don't know.  
19 A. Your question was different the second time.  
20 You --  
21 Q. Oh, well, answer the second question.  
22 A. Excuse me?  
23 Q. Answer the second question.  
24 A. Okay. Am I limited to the thumbdrive only?  
25 Q. No, you're not.

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1 A. Some of the documents that I provided  
2 originally that are on the webpage -- I mean, the topics  
3 that we covered are in those folders there, and then I  
4 provided additional topics.  
5 So I'm talking about baseline year,  
6 irrigated -- not irrigated acres. I'm sorry, what is  
7 it -- natural -- the forecasting the flow, reasonable  
8 carryover, and topics like that. I can't remember. I  
9 don't have the list. Would you like me to bring it up?  
10 Q. Yeah, I'm actually interested in what  
11 documents you received from the parties that contributed  
12 to the recommendations that are contained in Exhibit 4?  
13 A. And that is why I asked you to restate -- or I  
14 said the question was different. The first time you  
15 asked what came from the parties, and the second time  
16 you asked what I provided. So just to clarify, what  
17 came from the parties that we considered?  
18 Q. Yes.  
19 A. That would be in the baseline year and in the  
20 project efficiency folders, for the most part. There  
21 may be something else, but that was primarily -- Sophia  
22 was -- her comments focused on the baseline year, and I  
23 think forecast supply, I think. Greg's mostly focused  
24 on project efficiency.  
25 Q. And when you say that the documents would be

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1 in the folders that are titled "Baseline Year" and  
2 "Project Efficiency," are you talking about the folders  
3 on the website associated with the May 5th disclosure of  
4 the materials you're going to rely on, or are you  
5 talking about the thumbdrive, or both?  
6 A. I'm talking both.  
7 Q. Did you talk to the Director about the  
8 recommendations before you wrote them up?  
9 MR. BAXTER: Objection. To the extent, Matt,  
10 that your answer to the question would require you to  
11 disclose information regarding the Director's  
12 deliberative process on legal or policy considerations,  
13 you're instructed not to answer the question.  
14 MS. KLAHN: Can I ask for clarification,  
15 Garrick?  
16 MR. BAXTER: Sure, Sarah.  
17 MS. KLAHN: How is a question about whether he  
18 had a conversation with the Director about the  
19 recommendations before he wrote them up part of the  
20 Director's deliberative process?  
21 MR. BAXTER: I think it gets to -- you know,  
22 what pieces did the Director -- you know, whether there  
23 was that conversation goes to the Director's  
24 deliberative process itself as to what was communicated  
25 with the Director.

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1 MS. KLAHN: So is your view that any  
2 information that was communicated with the Director, we  
3 can't know that that information was communicated to the  
4 Director?  
5 MR. BAXTER: Well, you have a publicly  
6 available record of what was provided here to the  
7 Director. As Matt indicated, the Director reviewed this  
8 letter. It has identified on it -- and when I say "that  
9 letter," it's the letter of 12-23-2022 with the  
10 unreasonably long title, as you've identified. So you  
11 have documentation of what was considered.  
12 MS. KLAHN: Actually, I don't think we do. If  
13 there were other recommendations that didn't make it  
14 into the draft, we certainly wouldn't know that. We  
15 just know what came out of the internal process, I'll  
16 call it.  
17 MR. BAXTER: Well, not to be argumentative,  
18 Sarah, but I think if you look through the PowerPoint  
19 presentations, there are topics within that that you can  
20 see for yourself there was presentations on. And,  
21 ultimately, did not change. So as to your suggestion  
22 that you can't see as to what was considered and maybe  
23 not, ultimately, included, I think that's an incorrect  
24 assumption on your part.  
25 Q. (BY MS. KLAHN) How was Mat Weaver involved in

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1 the technical work group process?  
2 A. He did not attend any meetings in person. I  
3 believe that I saw him joining the meetings remotely. I  
4 don't know if he attended all of them.  
5 Q. Did he have any role in the exhibit -- in the  
6 final version of Exhibit 4?  
7 A. I believe he saw it. I don't know -- he saw  
8 the draft we submitted and saw this version. I don't  
9 know if he edited it.  
10 Q. Let's look at the substance of Exhibit 4.  
11 So the first paragraph -- do you need to take  
12 a look at this, or have you refreshed yourself enough  
13 about it that you feel comfortable to talk about it?  
14 A. I think we can talk about it.  
15 Q. Okay. So I want to ask you about -- will you  
16 look at the second sentence of the second paragraph. It  
17 says, "The meetings were attended by interested members  
18 of the public."  
19 Were there -- are you aware of people who  
20 attended who weren't associated with the parties to the  
21 Surface Water Coalition delivery call?  
22 A. Yes, there were people in attendance, either  
23 remotely or in person.  
24 Q. Do you remember any of their affiliations,  
25 like who were they with?

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1 A. The one I remember is -- I don't think they  
2 attended all the meetings, but there were some Idaho  
3 Power staff that did either remotely -- I can't remember  
4 if -- they might have been in person one time.  
5 Q. Anyone else?  
6 A. Everyone else that attended was either -- that  
7 I remember was either an attorney, a consultant, or  
8 worked for one of the parties in some way, like a canal  
9 manager. I think a couple canal managers were on the  
10 call at different times, but I don't really remember  
11 anybody else. I have the lists. We had a sign-in, and  
12 we kept track, but I don't remember.  
13 Q. Oh, and you kept track of the people on Zoom,  
14 too?  
15 A. Yeah. We have an attendance list for all of  
16 those.  
17 Q. Do you know if the materials from the  
18 technical work group, including things like those lists,  
19 are posted somewhere on the Agency's website?  
20 A. Posted? I don't know if they're posted. I  
21 don't think we have -- I can't remember. I'd have to  
22 look to see if we have it. We have many technical  
23 working groups. What I don't know is do we have a  
24 Surface Water Coalition technical working group. I  
25 would have to check on that.

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1 Q. I'm not going to brag about my Google skills  
2 or anything because they're not very good, but I've  
3 looked repeatedly for technical work group materials  
4 related to the Surface Water Coalition delivery call,  
5 and I don't find them. Although, I do find other  
6 technical work group materials from other basins. So I  
7 don't know, it might be a good thing to post, but that's  
8 not why we're here today. I was just wondering.  
9 So then if we go to the middle of the page,  
10 "Based on the information presented in the meetings and  
11 distributed to the technical work group, IDWR staff have  
12 the following preliminary technical recommendations."  
13 So I see three bullet points there. Can you  
14 talk me through what the three preliminary technical  
15 recommendations were?  
16 A. So the first bullet is talking about the  
17 baseline year and updating that. Our recommendation was  
18 to update that to the 2018 irrigation season.  
19 The second bullet is talking about reasonable  
20 carryover and the need to update -- or our  
21 recommendation to update that to use the -- in the  
22 calculation to use 2018 baseline year.  
23 And then the third bullet is to update the way  
24 we calculate project efficiency. And we had previously  
25 used a rolling average of 8 years, and it was to update

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1 it to 15 years.  
2 Q. And we'll get in and talk about each of those  
3 individually, but I wanted to just at least talk through  
4 that. And then what -- the next paragraph, I believe,  
5 covers what you didn't recommend.  
6 Could you talk about that, please?  
7 A. We presented, but we did not recommend using  
8 near real time METRIC to establish ET and, ultimately,  
9 crop water need. And then we also did not make a  
10 recommendation on using the transient for the model  
11 simulation for curtailment dates.  
12 Q. And I think there's another one in there you  
13 might have skipped. Updating the April and July  
14 regressions --  
15 A. Oh, I'm sorry. You are correct. That was the  
16 second half of that sentence. Oh, I guess it's one long  
17 sentence. I missed the second clause, you are correct.  
18 We did not update the natural flow supply regressions as  
19 well. Thank you.  
20 Q. So the last sentence says, "IDWR will continue  
21 to evaluate the integration of these and other  
22 techniques into the methodology."  
23 So was the thought at this point, from a  
24 process perspective, that this is what staff was  
25 recommending, you gave the parties three weeks to

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1 respond, and several did, and we'll talk about those  
2 comments, but that the Department's -- I mean, at this  
3 point, the modifications were limited to the three  
4 bullet points that you were recommending?  
5 A. I think that was our preliminary  
6 recommendation. I don't think at that point we had --  
7 at the time of the writing of this -- made the decision,  
8 the final decision about what -- you know, or I should  
9 say, not "we," the Director had not made the final  
10 decision about what was going to be amended or not  
11 amended.  
12 MS. KLAHN: So those of you that actually  
13 participated in the entirety of Jennifer Sukow's  
14 deposition, were the Spronk Water Engineers' January 16,  
15 2023, comments marked, does anyone know?  
16 MR. BUDGE: They were not.  
17 MS. KLAHN: So, Andrea, if you could take a  
18 look for, it's about ten pages -- sorry, six or seven  
19 pages long, and it has at the top "SWE, Spronk Water  
20 Engineers," and it has a January 16, 2023, date.  
21 ([Exhibit 11](#) marked.)  
22 Q. (BY MS. KLAHN) Have you been handed  
23 [Exhibit 11](#), Mr. Anders?  
24 A. I do have a paper copy.  
25 Q. Do you recognize this document?

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1 A. I do.  
2 Q. Could you identify it, please?  
3 A. It was submitted by Greg Sullivan from Spronk  
4 Water Engineers to Kara Ferguson, staff hydrologist, and  
5 Matt Anders, hydrology section supervisor, at the Idaho  
6 Department of Water Resources. And it's from Heidi  
7 Netter and Greg Sullivan at Spronk Water Engineers,  
8 dated January 16th, 2023.  
9 Q. And these are the comments for the Coalition  
10 of Cities and City of Pocatello on the technical  
11 revisions, potential technical revisions to the Fourth  
12 Amended Final Order; is that right?  
13 A. Yes.  
14 Q. So the -- and I believe this summarizes the  
15 materials that Spronk Water Engineers previously  
16 submitted during the course of the meetings, but for now  
17 I'm going to focus just on this document, [Exhibit 11](#).  
18 Let's turn over to page 2. The first paragraph there at  
19 the top of page 2 relates to "Updated Baseline Year,"  
20 and -- let's see here.  
21 So there's a statistic there that the Surface  
22 Water Coalition member diversions -- in the middle of  
23 the paragraph, that first full paragraph on page 2 --  
24 Surface Water Coalition member diversions during 2006,  
25 2008, 2012 averaged a combined 3,194,722 acre-feet,

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1 which was 99.8 percent of the new 2001 to 2021 average.  
2 Do you see that?  
3 A. I do see that.  
4 Q. Do you agree with that characterization?  
5 A. It looks accurate.  
6 Q. From the perspective of the way the  
7 methodology order operates, do you know how a new  
8 baseline year reflecting higher total diversions impacts  
9 projected shortages?  
10 A. Yes.  
11 Q. How is it impacted?  
12 A. Baseline year is used to predict what the  
13 demand or what the reasonable in-season demand will be  
14 for the portions of the season that we don't know yet,  
15 that haven't occurred. So in April, it is -- the  
16 baseline year is what we use for the demand portion of  
17 the calculation.  
18 So in April -- and then in July, it -- we use  
19 the baseline year for -- we have the data for April  
20 through June. We use only the portion of the baseline  
21 year in July through the end of the year to predict the  
22 rest of the year. And at the time of need, again, if  
23 the time of need happens in August, then from that point  
24 on, we use the baseline year.  
25 So the baseline year, any changes in that,

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1 either higher or lower, will directly affect, especially  
2 in April, the shortfall. Less so as you progress  
3 through the season because it's a smaller portion of the  
4 calculation.  
5 Q. And it will affect the shortfall how, if it's  
6 a higher baseline year average?  
7 A. Our calculation for shortfall is supply minus  
8 demand. So in that simple calculation there, if the  
9 demand gets higher, if there is a shortfall, and you  
10 increase the demand of the baseline year, it increases  
11 the shortfall. And if it decreases, if we decrease the  
12 baseline year, it will decrease the shortfall when there  
13 is a shortfall in April and the rest of the year.  
14 Q. So the diversions, using the 2001 to 2021  
15 diversions, the average -- sorry, 2001 to 2021 average  
16 diversions for Surface Water Coalitions have gone up; is  
17 that true?  
18 A. Yes, the average has increased since we looked  
19 at it in 2015.  
20 Q. Did you do any evaluation to find out whether  
21 that was -- well, let me ask you, first, sort of a  
22 statistics question. It might not be statistics.  
23 But if before you were averaging 2006, 2008,  
24 and 2012, and then you went to averaging 20 years, did  
25 you do any analysis to see if comparing those two was a

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1 valid comparison?  
2 In other words, that you were comparing apples  
3 to apples?  
4 A. I didn't understand that question.  
5 Q. Well, I mean, let me give you a hypothetical.  
6 If the baseline year for diversions had been 2013, which  
7 was a very dry year, not very many diversions, okay? If  
8 that was your baseline year, and then you went and took  
9 an average of 20 years, you said, oh, look, diversions  
10 went up, we have to use the new average, I'm asking if  
11 it's truly a fair comparison to say what you were  
12 looking at before doesn't represent reality anymore?  
13 You picked a different way of looking at  
14 reality, so how do you know it really is the right way  
15 to characterize the baseline year?  
16 MR. BAXTER: I'm going to object. I think  
17 there was more than one question in there, compound  
18 question. Is there a singular question for the witness?  
19 But to the extent you can answer that question  
20 or you understand the question, you can answer it, Matt.  
21 THE WITNESS: I'm still trying to understand  
22 the question.  
23 Q. (BY MS. KLAHN) How did you know 2006, 2008,  
24 and 2012 was the right combination of years for the  
25 baseline year prior to your evaluations in 2022?

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1 A. How did we know it was the correct year? Is  
2 that what you said, "correct year"?  
3 Q. Yeah, the correct baseline year.  
4 A. So the methodology lays out the criteria that  
5 we use to select a baseline year. When we did it in  
6 2014 and '15, there were no years that met the criteria  
7 that we had laid out. And I think that had happened  
8 when they did the Second Amended Methodology in 2010,  
9 because I think they were using '06, '08 at that time.  
10 So we followed that -- since we didn't have a  
11 baseline year, we followed that methodology of using a  
12 combination. As far as "correct," that word throws me a  
13 little bit. I don't know that we ever know what's  
14 correct. I don't know what that would be, but we did  
15 select '6, '8, '12. The diversions at that point were  
16 above average, which is what we wanted, and that was the  
17 combination we selected.  
18 Q. So the way you got to a higher baseline year  
19 was by averaging 20 years of diversions, and it's  
20 practically the same, 99.8 percent of the '06, '08, and  
21 '12 is the 2001 to 2021 average. Do you see what I'm  
22 saying?  
23 Like, there's a very small difference between  
24 those. So I'm just curious, from a technical  
25 perspective, why -- I mean, if it was -- what if it was

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1 99 -- what if the '06-'08 -- well, let me stop there. I  
2 really am curious about this. I'm not trying to be  
3 difficult, but I'm having a hard time formulating a  
4 question.  
5 Let me withdraw all that and say it a  
6 different way. If the 2001 to 2021 average was  
7 significantly higher than '06, '08, and '12, you'd say,  
8 "Oh, whoa, look, this is" -- "we're meeting the baseline  
9 year criteria." But when there's only .2 percent  
10 difference, did you have any questions about whether  
11 this really was a valid change?  
12 A. I think we have to look at the plain language  
13 of the methodology that says it has to be above average.  
14 Q. So the Spronk comments go on to say that the  
15 average diversions are no longer -- the '06, '08, and  
16 '12 average diversions are no longer above average  
17 because diversions by several of the surface water  
18 coalitions have increased since the methodology was  
19 updated in 2016.  
20 Did you do any analysis to find out why the  
21 diversions had gone up?  
22 A. What I see when I look at the data -- let's  
23 start with crop water need -- I'm sorry, not crop water  
24 need, crop mix. If we look at the crop mix data -- I'll  
25 just define crop mix. That is the portion of the

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1 individual crops that we see within the Surface Water  
2 Coalition service areas. We are -- that's part of our  
3 calculation, so we have the data.  
4 What we're seeing over time is a shift to  
5 crop -- more crops, a larger percentage of alfalfa,  
6 corn, and maybe potatoes a little bit. And we see that  
7 shift over time. So there's more intensive crops being  
8 grown, so that increases the crop water need, the need  
9 for water.  
10 In the comments from one of the -- that we got  
11 for the technical working group, they provided more  
12 information about what we can't see from the crop mix,  
13 like additional cuttings of alfalfa, which increases the  
14 crops, so -- and different harvesting methods, and  
15 things like that.  
16 So what we see is a shift to more intensive  
17 water use. So, for me, I think the increase in the  
18 diversions is related to that increase in crop water  
19 need. I think it's accurate that -- what Spronk is  
20 saying in terms of the diversions are increasing, just  
21 the raw diversions.  
22 Q. And you mentioned comments from -- I think it  
23 was the Surface Water Coalition comments, actually, that  
24 mentioned changes in harvesting and crop mix and that  
25 kind of stuff that could support the reasons for higher

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1 diversions.  
2 Are there other things other than the Surface  
3 Water Coalition comments and your looking at the crop  
4 mix that you started out talking about that  
5 contributed -- or that you did as any sort of an  
6 evaluation related to the increase in diversions?  
7 A. I think that was it.  
8 Q. If the -- so let me ask you how you interpret  
9 the -- as the person who does the demand calculations,  
10 the baseline year rubric, if I can call it that, in the  
11 methodology order.  
12 What happened in the Fifth Methodology Order  
13 was you switched from 2006, 2008, 2012 because that  
14 average was only 99.8 percent of the 2001 to 2021  
15 average. If you had found that the '06, '08, and '12  
16 average was 99.9 percent of the 2001 to 2021 average,  
17 would you still have advocated for moving to the '01 to  
18 '21 average?  
19 A. I think that's still below average. I don't  
20 think it's above average.  
21 Q. So is there any amount of increased diversions  
22 where you'd go, oh, we don't need to change this, it's  
23 so small, or if it's more, it's more, and that's what  
24 you go with?  
25 A. I think that's what the methodology states.

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1 It has to be above average.  
2 Q. So the next comment in the Spronk letter is  
3 related to project efficiency. And the comment starts  
4 by noting that the computed project efficiency has  
5 decreased or remained flat since 2016, and Spronk's  
6 comment is: "This is surprising given the continued  
7 sprinkler conversions and general advances in irrigation  
8 practices and technology that have occurred in the  
9 irrigation industry over the past 20 years."  
10 Do you agree with that comment?  
11 A. Partially.  
12 Q. What part?  
13 A. I agree that there are advances in irrigation  
14 practices and technology and that those should improve  
15 project efficiency. I don't think that's the whole  
16 story to look at. And when I talk about, you know,  
17 there are increases in the crop water need also  
18 occurring. So they're both happening at the same time.  
19 Q. Can you talk about why an increase in crop  
20 water need would lead to a reduction in efficiency -- in  
21 the project efficiency? Sorry.  
22 A. So we calculate project efficiency as the crop  
23 water need, which is divided by the diversions. If the  
24 diversions are increasing faster than the crop water  
25 need, then the project efficiency is going to go down.

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1 So that's what's happening. The crop water need is  
2 going up, we see that going up, but we see the  
3 diversions going up at a faster rate. So that's  
4 decreasing the project efficiency.  
5 Q. With that relationship, the more the Surface  
6 Water Coalition diverts, the higher the baseline year  
7 will trend in the future, would you agree?  
8 A. The baseline year -- let's say we selected  
9 2008, even though the diversions go up, if they continue  
10 to go up, that doesn't necessarily mean that we're going  
11 to increase the baseline year.  
12 Q. Why not?  
13 A. If it's above average already, and it meets  
14 the criteria that we have in the -- and by definition,  
15 if it meets the criteria that we have, it may not have  
16 to be adjusted. It might be possible to say -- I don't  
17 know what's going to happen, but it's possible that it  
18 could just stay at 2018 while -- if the diversions  
19 continue to increase.  
20 It's not -- the way you framed your question,  
21 maybe I misunderstood, but it seemed like you were  
22 saying, if diversions go up, crop -- the baseline year  
23 has to go up, and I don't think that's accurate. It  
24 just has to meet the criteria.  
25 Q. But if the criteria is 2001 to 2021, if that's

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1 the average you're looking at, and the diversions  
2 increase significantly, doesn't the average eventually  
3 go up?  
4 A. Oh, yeah, I agree. And it may get to the  
5 point --  
6 Q. And then the baseline year goes up. The  
7 baseline year changes.  
8 A. It may have to, yes, possibly. I agree with  
9 that, yeah.  
10 Q. So would you agree that for reasonable -- for  
11 the reasonable in-season demand calculation, assuming  
12 the same crop water need, the more the Surface Water  
13 Coalition diverts, the lower the project efficiency will  
14 be?  
15 A. So if the trend continues that project  
16 efficiency goes down, yes, over time, to get reasonable  
17 in-season demand, we divide crop water need by the  
18 project efficiency. So if the project efficiency is  
19 going down, the reasonable in-season demand will be  
20 going up.  
21 Did that answer your question?  
22 Q. It does.  
23 A. Okay.  
24 Q. As a technical person responsible for the  
25 demand calculations in the methodology order, does that

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1 give you any concern?  
2 A. If that's truly what's happening, and it's not  
3 something that we are making an error, like something  
4 like we're making an error in our calculations, and we  
5 have the relationship wrong, or there's something wrong  
6 with the calculations, if that's truly what's happening,  
7 I don't think -- you asked if it was a concern to me.  
8 Not if that's truly what's happening.  
9 There's no threshold -- when you said  
10 "concern," there's no threshold that we're like, it  
11 can't go above this, or it has to be here. So I  
12 don't -- I guess there's -- yeah, I'll leave it at that.  
13 Q. So the policy considerations related to the  
14 senior surface water users being able to be less and  
15 less efficient, from a project efficiency standpoint,  
16 and be rewarded with a higher reasonable in-season  
17 demand, those policy considerations aren't part of your  
18 job; is that right?  
19 A. Yeah, I think that is correct.  
20 Q. In your time working on the methodology  
21 orders, have you ever had a conversation with the  
22 Director about these kinds of policy issues where he  
23 challenged any of the technical conclusions on the basis  
24 of policy?  
25 MR. BAXTER: I'm going to object to the

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1 question.  
2 Matt, to the extent your answer to the  
3 question would require you to disclose information  
4 regarding the Director's deliberative process on legal  
5 and policy considerations, you're instructed not to  
6 answer the question.  
7 MS. KLAHN: Let me clarify that, Garrick. So  
8 my question was in his time working on any of the  
9 methodology orders.  
10 Q. (BY MS. KLAHN) And I'll refine that to say,  
11 in your time working on the Third or Fourth Methodology  
12 Orders, have you ever had conversations with the  
13 Director about issues where he challenged any of the  
14 technical conclusions on the basis of policy?  
15 MR. BAXTER: I'm going to let you go ahead and  
16 answer the question, Matt.  
17 THE WITNESS: The Director, when we -- I'll  
18 explain my experience. When we talk to the Director  
19 about our calculations or review, I -- he often has a  
20 lot of questions and a lot of conversation with us about  
21 what it means and how we do things.  
22 I don't ever really know what his motivation  
23 for those questions are. I don't know if it's policy,  
24 or he has a background as an engineer, he understands a  
25 lot of this really, really well, surprisingly well, at

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1 times. So I don't know what his motivations are, why  
2 he's asking his questions or challenging -- to use your  
3 terminology -- challenging us on it.  
4 Q. (BY MS. KLAHN) Thank you. As the person who  
5 calculates the demand piece of the methodology, is there  
6 any part of your calculations which you would call a  
7 reasonableness check?  
8 Do you know what I mean by that?  
9 MR. BAXTER: I'm going to object. I think it  
10 asks for a legal conclusion as to "reasonableness."  
11 But go ahead and answer the question, Matt.  
12 THE WITNESS: I think there's two pieces of  
13 this. When I think of -- my interpretation of  
14 reasonableness, there's a legal portion, and there's a  
15 technical portion. We always are reviewing the data  
16 that come in for what I would call reasonableness. Is  
17 that a reasonable number? We're doing QA/QC checks.  
18 Any calculation we make, does that make sense.  
19 And that's -- so on that side, we are  
20 reviewing the data for that. I am not a legal expert.  
21 I cannot -- it's out of my expertise to speak to the  
22 legal side of reasonableness.  
23 Q. (BY MS. KLAHN) Thank you. Are you familiar  
24 with the project efficiencies of the Surface Water  
25 Coalition in April and October?

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1 A. I'm familiar with them, yes.  
2 Q. Do you consider those low project  
3 efficiencies, in the April and October time frame, to be  
4 reasonable from a technical perspective?  
5 A. Those portions of the irrigation season are --  
6 those efficiencies are difficult to understand at times.  
7 There's a certain amount of water -- if they're running  
8 the canals, there's a certain amount of water that they  
9 need, and, you know, it's more than the crop water, you  
10 know, the plants may need at that portion or they may  
11 get rain. There's different reasons.  
12 They are often very -- they can be really high  
13 or really low. From a reasonableness comparison to past  
14 years, they are reasonable. They're not outside the  
15 normal bounds that we see, from a technical point of  
16 view, if that answers your question.  
17 Q. So your universe of comparison is other  
18 project efficiencies associated with the same canal  
19 companies when you make that statement; is that right?  
20 A. Yeah. I think every system and every area has  
21 a unique set of circumstances that drive project  
22 efficiency. You know, the canal setup, the soils, the  
23 geology, there's -- it's all unique by system. Even  
24 within a system, it changes.  
25 Q. Sure. But the system can be run efficiently

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1 or it can be run inefficiently, given those baseline  
2 facts that you described; would you agree with that?  
3 A. What I see in the data is that it -- the  
4 companies -- the Surface Water Coalition normally gets  
5 more efficient in June, July, and August, and less  
6 efficient on the shoulder seasons. I -- I'm going to  
7 stop there.  
8 Q. To the extent the less efficient shoulder  
9 season efficiencies are driving the shortage  
10 calculations, is that something that you have considered  
11 from a technical perspective that needs to be addressed?  
12 A. We have noticed that if you get a -- let's use  
13 September -- if you get a really hot September where  
14 they need a lot of water, there's a high crop water  
15 need -- oftentimes, September has a lower project  
16 efficiency -- there will be a lot of reasonable  
17 in-season demand. So, yes, there can be some  
18 inconsistencies there from year to year.  
19 Q. And taking a step back, in your roles at the  
20 Department of Water Resources, have you developed an  
21 understanding of what, sort of, an industry standard  
22 from an irrigation perspective -- what an industry  
23 standard for a project efficiency -- what that range  
24 looks like?  
25 A. No.

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1 Q. And have you done any investigations, yourself  
2 or your staff, of the seven canal companies that make up  
3 the Surface Water Coalition and how their systems  
4 operate?  
5 A. No.  
6 Q. Do you think those things could inform your  
7 evaluation of the reasonableness of the efficiency  
8 numbers?  
9 MR. BAXTER: I'm going to object. Again,  
10 asking the witness to draw a legal conclusion. As he  
11 previously testified, he's not an expert in the legal  
12 area as to the term of efficiencies -- or reasonableness  
13 in which you're using it at this time.  
14 MS. KLAHN: I'm not using it in the sense of  
15 the legal area. As Mr. Anders appropriately divided it  
16 up, there's a technical reasonableness and a legal  
17 reasonableness. And this question of whether those  
18 issues related to industry standards of irrigation or  
19 exactly how the Surface Water Coalition operates, my  
20 question was: Do you think those things would inform  
21 evaluation of the reasonableness of the efficiency  
22 numbers. Didn't ask him for a legal conclusion.  
23 MR. BAXTER: I'm going to object as to the  
24 foundation. As Mr. Anders testified at the beginning,  
25 he does not have the experience or basis related to the

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1 technical operations of irrigation systems.  
2 But, Matt, to the extent you understand the  
3 question, go ahead and answer the question.  
4 THE WITNESS: I think the more we know about  
5 the system, yes, it would inform us about how it's  
6 operated and the project efficiencies that we see.  
7 MS. KLAHN: It is almost 11:00 o'clock. We've  
8 been going at this for two hours. I propose we take a  
9 ten-minute break.  
10 How does that sound?  
11 THE WITNESS: Of course. Yeah.  
12 (Break taken.)  
13 (Exhibit 12 marked.)  
14 Q. (BY MS. KLAHN) Before we get back into the  
15 document we were discussing, Exhibit 11, during the  
16 break, we got a screenshot of the directories of the  
17 thumbdrive that you brought to the deposition; is that  
18 correct?  
19 A. Correct.  
20 Q. And that's been marked as Exhibit 12; is that  
21 right?  
22 A. Correct.  
23 MS. KLAHN: And just to be clear on the  
24 record, then, Garrick, some provision will be made to  
25 make those files available to the parties?

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1 MR. BAXTER: Yes.  
2 MS. KLAHN: Today, possibly?  
3 MR. BAXTER: I believe that's possible. I  
4 think IDWR was having some trouble with their FTP site,  
5 but let me confirm with Sarah. I believe she's trying  
6 to find a way to get that information out and  
7 accessible.  
8 MS. KLAHN: Excellent. Thank you.  
9 Q. (BY MS. KLAHN) Returning to finish up  
10 Exhibit 11, when we broke, we were talking about -- so  
11 the last paragraph, next to the last paragraph on  
12 page 2, refers to the -- a paragraph from it says, "The  
13 2010 Fourth Amended Methodology Order," but I think that  
14 might be just the Fourth Amended Methodology Order.  
15 And it quotes from paragraph 15 that "during  
16 periods of drought when groundwater users are subject to  
17 curtailment, members of the Surface Water Coalition  
18 should exercise reasonable efficiencies to promote the  
19 optimum utilization of the State's water resources?"  
20 Do you see that?  
21 A. Yes.  
22 Q. Have you -- are you familiar with that?  
23 A. Yes, but I believe that it's either the 2010  
24 Second Amended Methodology Order or the 2016 Fourth  
25 Amended Methodology Order.

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1 Q. Yeah, I agree. I don't think the way it's  
2 stated at the beginning of the sentence here is correct.  
3 I think it's supposed to be the 2016 Fourth Amended  
4 Methodology Order.  
5 A. Okay.  
6 Q. Is there any effort by the Department to  
7 ensure that the Surface Water Coalition "exercises  
8 reasonable efficiency during times of drought when  
9 groundwater users are subject to curtailment"?  
10 MR. BAXTER: Objection. I think that asks the  
11 deponent to make conclusions as to legal issues,  
12 especially efficiencies, reasonable efficiencies.  
13 Q. (BY MS. KLAHN) I was really asking,  
14 generally: Does the Department do any investigation to  
15 see whether the Surface Water Coalition is reasonably  
16 efficient during drought?  
17 MR. BAXTER: Again, I think it goes to that  
18 scope of the issue of reasonableness.  
19 But, Matt, to the extent that you can answer  
20 the question, go ahead and answer the question.  
21 THE WITNESS: I don't know of anything that we  
22 do that is investigating efficiencies for the Surface  
23 Water Coalition.  
24 Q. (BY MS. KLAHN) So under the -- of the  
25 discussion that we -- the conversation that we've had so

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1 far on page 2, underneath the heading "Updated Baseline  
2 Year," let me ask you: At the time you received these  
3 in January of 2023, at the time you received these  
4 comments, did you review them?  
5 A. Yeah, I reviewed them many times.  
6 Q. And do you think that the comments that Spronk  
7 Water Engineers provided under the "Updated Baseline  
8 Year" heading were valid, from a technical perspective,  
9 in your view?  
10 A. I took the data that we received that's  
11 referenced in the later portions here, I did review the  
12 data. I think that it was an accurate -- the graphs  
13 that I saw and the data appeared accurate.  
14 You know, our data are changing from time to  
15 time, so they didn't match the data set that I used, but  
16 the data seemed to be accurate. I -- I don't think that  
17 I agree -- or, no, I did not agree with the way some of  
18 the conclusions and the characterizations, the way the  
19 data were characterized.  
20 For example, the averaging the project  
21 efficiency for the whole year, I think that tells us  
22 something about the larger picture, but it doesn't -- we  
23 calculate by monthly, and we do have the monthly data.  
24 It tells more information to do that.  
25 Q. So from a technical perspective, you didn't

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1 agree with that comment that Spronk had?  
2 A. I think that I agreed with the -- well, let's  
3 back up. Which comment am I agreeing with?  
4 Q. Well, you picked out the -- what you  
5 specifically said was the concept of moving from monthly  
6 efficiencies to annual efficiency you didn't agree with.  
7 A. Yeah, I'm not sure about the -- or at least  
8 when I got it, I wasn't sure about the impact that had  
9 on the analysis. So I looked at it, as well, on a  
10 monthly time frame. But I agree that if you look at it  
11 from an average, the project efficiency over the whole  
12 year, it is decreasing. I do agree with that statement  
13 that was made in there.  
14 Q. So understanding that there's silos of  
15 activity -- or silos of responsibility at the  
16 Department, and that you are in the technical silo and  
17 the Director's in the policy and legal silo, do these  
18 kinds of technical issues ever get communicated to the  
19 Director?  
20 Understanding you're not having a policy  
21 conversation with them. You made that clear a couple  
22 questions ago, but is this the kind of stuff that you  
23 would say, "Hey, maybe we should think about this," or  
24 does that just not happen, it stays with you, you make  
25 the decision, that's all it is.

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1 A. We communicate to the Director things such as  
2 this. Any concerns we have or even things that we're  
3 thinking about, there is a two-way conversation that,  
4 you know, we say this, and then we get input back from  
5 him.  
6 Q. Okay. So I think you jumped to the last part  
7 of the comments, which were the updated project  
8 efficiencies, which is the bottom of 2 and the top of 3.  
9 And the comment there is proposing to change the  
10 computation of the monthly average project efficiency  
11 value from the average from the most recent 8 years to  
12 the average of the most recent 15 years. And the  
13 comment is that Spronk believes this may lessen the  
14 effect of recent reductions in project efficiency for  
15 certain Surface Water Coalition members.  
16 I guess the first question is: Can you  
17 explain why you decided to go from an 8-year average to  
18 a 15-year average?  
19 A. Since the Fourth -- well, the Third  
20 Methodology, we have been using the 8-year average. And  
21 that is a calculation that I do. And I wasn't clear why  
22 we were doing it. I couldn't justify it, so I -- that's  
23 why we took it to the technical working group and why we  
24 reviewed it internally. Why are we doing this? Do we  
25 know why we're doing this? And the answer was we were



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1 unclear.

2 I think because we -- in the Third Methodology

3 we used an 8-year average, and when I started doing the

4 calculations, I just continued with that. So it was

5 just a matter of we're not sure why; is there a better

6 way. Something that we can explain to people why we're

7 doing it.

8 Q. But why not a 9-year average or an 18-year

9 average or a 22-year average? Like, what was magic

10 about 15, from a technical perspective?

11 A. There's nothing magic about 15. I think when

12 we do averages, we often think of kind of round numbers,

13 5, 10, 15. When you do an 8-year average, at least in

14 my mind, when I see that, I'm like, why are we doing 8?

15 There must be a reason that we're doing 8. But I don't

16 have a reason. So if you get off a rounded year, it

17 seems like you need to have a reason for that.

18 Q. Okay.

19 A. And I think we did debate shorter at the

20 technical working group, going to 5, 10, or 15. We

21 talked about 20. We really don't have enough data for

22 20 to really see the implication of that.

23 Q. So the remainder of this, I believe, is the

24 monthly project efficiency -- well, not the remainder of

25 it. If you flip to the last one, two pages of this,

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1 there are some graphs that Spronk Water Engineers put

2 together, and I believe they compare annual project

3 efficiencies, and then plot on the second one adjusted

4 diversions, the third one crop water needs, and then

5 look at annual versus monthly project efficiencies.

6 This information, I believe, was provided during the

7 time of the technical work group, I think, on

8 December 21st.

9 A. Uh-huh.

10 Q. Did you consider any of this -- any of these

11 graphs in developing your recommendations about what

12 should be changed in the Fifth Methodology Order?

13 A. The recommendations that we issued on

14 December 23rd?

15 Q. Yes. Yes.

16 A. We -- at that point, we had -- or I had only

17 had a limited amount of time to review. I hadn't

18 done -- at the time we issued that letter, I hadn't done

19 a full review of this yet.

20 Q. So then it was provided to you again in

21 January.

22 Were you able to do a full review in January?

23 A. Yeah, I worked on it after we had more time.

24 Q. Okay. And if we take a look at the first set

25 of graphs, which is titled, "Annual Project Efficiency

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1 2001 to 2021" --

2 A. Yep.

3 Q. -- "Excluding Years With Demand Shortfall,"

4 when you say you looked at these, did you like check

5 them to see if they were right?

6 A. I checked them to see if I could re-create

7 something close to this, which I was, with a different

8 data set. I didn't use the data set he sent us. I used

9 our current data set.

10 Q. And the declining efficiencies over time for

11 North Side Canal Company, for example, just to pick one

12 out, did that -- was that something you were aware of?

13 A. I think just generally. Not in the detail

14 that he's doing it here. When I say "he," I assume this

15 is Greg doing this.

16 Q. I think it was Greg. Even though I think

17 Heidi pulled it all together and sent it, I believe he

18 did this initial analysis.

19 And then if you turn to the next set of

20 graphs, "Annual Project Efficiency Plot Against Annual

21 Adjusted Diversions," did you draw any conclusions from

22 taking a look at this?

23 A. For some of these members, it shows that as

24 diversion is going up, annual project efficiency is

25 going down, at least a couple of them, but it looks like

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1 Twin Falls Canal Company is the exception here?

2 Q. Let's turn to the next page, the annual

3 project efficiency versus annual crop water need.

4 When you looked at this, what conclusions did

5 you draw?

6 A. As -- for all the companies, based on the

7 trend line that he gives, annual project efficiency is

8 increasing with annual crop water need. Yeah.

9 Q. And then if we go to the last page where we

10 have the graphs plotted, "Annual Project Efficiency

11 versus Monthly Project Efficiencies," I think this is

12 where my question came from related to the low project

13 efficiencies on the shoulder months.

14 When you took a look at this, what conclusions

15 did you draw?

16 A. I think that the -- often in April the project

17 efficiency is very high like for a couple of the

18 companies, Milner, A&B, so it seems like the trend is

19 more, you know, project efficiency. It's kind of around

20 the annual average early in the season, then it goes

21 above for the main summer portion of the irrigation

22 season, but it drops off significantly for a lot of

23 these companies late in the year.

24 And then the other two lines are just the --

25 oh, I see what he did. The annual average, and then

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1 annual average plus one standard deviation. So it's  
2 just a comparison. If you average it, that's what it  
3 would look like.  
4 Q. Do any of these graphical presentations of  
5 data suggest any modifications from a technical  
6 perspective to the demand calculations that are in the  
7 methodology order?  
8 A. I think he suggested in the text here that we  
9 should look at a seasonal project efficiency. I did  
10 some testing on what I thought the possible ways that we  
11 could approach that in an alternate data set. And I  
12 looked at just averaging, you know, April and May or  
13 averaging September and October.  
14 For the most part, what I found was that  
15 increases the demand shortfall if you do something like  
16 averaging so there would have to be an alternate method.  
17 I didn't come up with anything else, but it would have  
18 to be some sort of -- rather than manipulation of the  
19 data or averaging or something like that, setting some  
20 kind of threshold or something. But I didn't pursue  
21 that any farther.  
22 Q. All right. Let's turn to the Fifth  
23 Methodology Order, which I believe was marked during  
24 Jennifer Sukow's deposition, if somebody could provide  
25 that to Mr. Anders.

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1 MR. BAXTER: Was that Exhibit 2?  
2 COURT REPORTER: He's got the exhibit book for  
3 the previous exhibits.  
4 MR. BAXTER: It will be in here under  
5 Exhibit 2, Matt.  
6 THE WITNESS: Exhibit 2?  
7 MS. KLAHN: So is it Exhibit 2? Is that what  
8 it was?  
9 THE WITNESS: Yes, it is.  
10 Q. (BY MS. KLAHN) Thanks. So let's look at  
11 paragraph 19, please, in the findings of fact.  
12 A. Is that on page 9?  
13 Q. It is.  
14 A. Okay.  
15 Q. There is a term used in paragraph 19, subpart  
16 (a), "the net area of the irrigated crops."  
17 What does that mean?  
18 A. To me, that means the actual irrigated land.  
19 We often get or we're using shapefiles that represent  
20 service areas. To me, this represents just the portion  
21 that's irrigated within that.  
22 Q. So your understanding would be that 19(a) is  
23 the equivalent to irrigated acres?  
24 A. "The net irrigated of the irrigated crops"?  
25 Yeah, I think so.

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1 Q. Did you have any role in actually writing the  
2 methodology order?  
3 A. I did.  
4 Q. Can you point out what paragraphs you were  
5 involved in drafting?  
6 A. Do you want me to identify every paragraph or  
7 would you like me to identify just general topics that I  
8 did?  
9 Q. I mean, it won't take too long, I don't think.  
10 Unless you wrote the whole thing, just tell me you wrote  
11 the whole thing.  
12 A. No.  
13 Q. Just run through and tell me what you were  
14 involved in drafting, paragraph by paragraph.  
15 A. All right. So on page 3, I did some editing  
16 on 9. And when I say "editing," I made some edits,  
17 proposed edits. Ultimately, they're the Director --  
18 whether he accepts them or not. So some of the edits  
19 made it, but some did not.  
20 Q. Okay.  
21 A. On the "Climate," that figure on Figure 4, the  
22 "Growing Season Precipitation." On page 5, I edited in  
23 paragraph 14. Page 6, edited the figure, "April through  
24 October Reference ET." Page 7, also the figure -- I did  
25 the figure on "Growing Degree Days." 8, the figure on

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1 "Heise Natural Flow April through July." I don't know  
2 who edited -- if it was Kara or I that edited 17. It  
3 could have been either one of us to update it to the  
4 current average and the years. The same with 18, it  
5 could have been either one of us. We both are editing,  
6 updating the order. I updated the figure on page 9, the  
7 "Natural Flow and Storage Allocation." Page 10, I  
8 edited 22 -- is that "Finding of Fact"? I think it is.  
9 And the table. And then 11, page 11. 24, we edited  
10 that together. That may or may not have been me, but  
11 the figure was me. I did editing in 26 on page 11. I  
12 did editing of 27. I did editing in the table there in  
13 the middle of page 12 -- or proposed edits, I should  
14 say.  
15 Q. Well, let me ask you that: If it's technical  
16 material and you made proposed edits, is there any  
17 chance that the numbers were changed after you made the  
18 proposed edits?  
19 A. It's possible.  
20 Q. Who would have done that?  
21 A. I don't know.  
22 Q. Is Garrick in there trying to do math or  
23 something?  
24 Just kidding, Garrick.  
25 Okay. Sorry. Keep going.

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1 A. Okay. I think we were on page 14. That table  
2 in the middle of 14.  
3 Q. Wait. So nothing on page 12 or 13 other than  
4 paragraph 27?  
5 A. 12 and 13?  
6 Q. Yeah.  
7 A. So I edited 27, and then I edited the table --  
8 or proposed edits on the table on 12.  
9 Q. Nothing on paragraphs 28, 29, 30, 31, 32?  
10 A. 32, yeah, there is a change there from 8-year  
11 to 15-year rolling average, proposed some edits there.  
12 Page 14, the table. Page 15, I don't see any at this  
13 point on 15. So I've skipped to page 21. I have done a  
14 quick cursory review of the pages in between. I didn't  
15 see anything, but I may have missed something on there.  
16 But kind of pointing out the major things that  
17 I know that we spent time on, page 21, on "Reasonable  
18 Carryover" -- actually, it would be on page 22 is where  
19 we started editing, 60 -- did we do that? The table  
20 under 66 there, it looks like we edited the years in the  
21 actual 66, and the table under it, and 67 to update the  
22 baseline year, at least that much editing. Editing  
23 under 68 in the table.  
24 Page 24, that table we added years, a  
25 significant edit there. Page 25, Item 70 or

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1 paragraph 70 was edited. 26, also that table was  
2 edited. 27, paragraph 71, and the table. And then I  
3 believe for "Reasonable Carryover" starting in Section  
4 D, we went through "A&B," "AFRD2," "BID," "Minidoka,"  
5 "Milner" --  
6 COURT REPORTER: Okay, wait. Can you go a  
7 little bit slower for me?  
8 THE WITNESS: Sorry. I forgot you were trying  
9 to write this down. I'll go back. So on page 27, under  
10 "Reasonable Carryover," the paragraphs for "A&B,"  
11 "AFRD2," "Minidoka," and "BID," "Milner," "North Side  
12 Canal Company," "Twin Falls Canal Company," and the  
13 table in 78, there were varying amounts of editing  
14 there.  
15 Q. (BY MS. KLAHN) Okay.  
16 A. Or proposals by us to editing. I'm on  
17 page 31. All the edits -- I wouldn't have made any  
18 edits to the determination of curtailment date. I  
19 wouldn't have made any edits in "Conclusions of Law."  
20 And I think there were edits on Step 2 of page 40, but  
21 that would not have been -- because I see the word  
22 "transient" there, so there had to be some kind of edit  
23 going on there. And then on page 43, paragraph 20.  
24 That's a general overview of just looking at  
25 it quickly where we made -- or I or Kara made proposed

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1 edits.  
2 Q. Okay. Thank you. Now, can I turn your  
3 attention back to paragraph 20 of the "Findings of  
4 Fact."  
5 A. Okay. On page 9?  
6 Q. Yes. So paragraph 20 says, "Sprinkler systems  
7 are currently the predominant application system." And  
8 there's a reference to the "Record Volume 37 at pages  
9 7101 to 7102." And if you look up to paragraph 19, you  
10 can see why I'm saying it's Volume 37 of the record.  
11 Are you familiar with the -- with that  
12 reference to Volume 37, the Record Volume 37?  
13 A. No.  
14 Q. Have you ever gone to look at what it says on  
15 Record Volume 37 pages 7101 to 7102? 7102, yeah.  
16 A. Not a time that I can identify.  
17 Q. Do you know when the hearing was related to  
18 that record of decision?  
19 A. I do not.  
20 Q. Are you familiar with any of the evidence that  
21 was provided at that hearing that supported the  
22 conclusion stated in paragraph 20?  
23 A. I am not.  
24 Q. To the best of your knowledge, has the  
25 Department done any analysis since the hearing

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1 associated with the record cites there to evaluate the  
2 nature of irrigation application systems in the Surface  
3 Water Coalition lands?  
4 A. Not that I am aware of.  
5 Q. Is it possible that that kind of analysis  
6 could be done and you wouldn't be aware of it --  
7 A. Yes.  
8 Q. -- given your position?  
9 A. Yes.  
10 Q. And who might do that analysis?  
11 A. The most likely place -- just hypothesizing  
12 who might do something like that -- somebody in the  
13 hydrology section or possibly in the water distribution  
14 may look at something like that.  
15 Q. Is your title manager of hydrology and GIS?  
16 A. Technical services, yeah, I am the --  
17 Q. So if somebody was doing this kind of analysis  
18 in the hydrology section, you would probably be aware of  
19 it, wouldn't you?  
20 A. It's likely that I would have heard about it,  
21 but I -- let me back up, I've been in this position over  
22 those two sections for about three months.  
23 Q. Oh, okay.  
24 A. So I -- but I may have heard about it, but  
25 it's not guaranteed. There are -- I'm just estimating

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1 here -- there's about 15 or a little more hydrologists  
2 and hydrogeologists and modelers working in the  
3 hydrology section. I don't have, you know, just minute  
4 understanding of what each one of them have done all the  
5 time.  
6 Q. If the Department were to conduct this kind of  
7 an analysis, would it be provided to you as the person  
8 who is in charge of demand calculations for the  
9 methodology order?  
10 A. I don't know if it would be -- what was the  
11 term you used? What was the term you used there?  
12 Q. If the Department were to conduct this kind of  
13 analysis, would it be provided to you --  
14 A. Oh, "provided."  
15 Q. -- as the person who is in charge of demand  
16 calculations?  
17 A. It's likely I would be talking to them and see  
18 their results, yes.  
19 Q. Let's turn to paragraph 21 on the next page.  
20 A. Okay.  
21 Q. So, again, the first sentence says, "Estimates  
22 of irrigated acres from the hearing show a trend of  
23 decreasing irrigated acreage," and a reference to the  
24 record from that hearing. It goes on to say, "According  
25 to the Hearing Officer, beneficial use cannot occur on

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1 acres that have been hardened or are otherwise not  
2 irrigated."  
3 And, again, just to confirm, you haven't  
4 looked at the record citations associated with those --  
5 with that paragraph either; is that correct?  
6 A. Correct.  
7 MS. KLAHN: Before we talk about the table  
8 there on page 10, I'd like to move to a new exhibit.  
9 Andrea, there's a three-page exhibit that has  
10 a picture of the Snake River on it, and it's dated  
11 February 19th, 2015. And I'd like to mark that as  
12 [Exhibit 13](#).  
13 ([Exhibit 13](#) marked.)  
14 Q. (BY MS. KLAHN) All right. Mr. Anders, you've  
15 been handed [Exhibit 13](#).  
16 MR. BAXTER: Sarah, would you just pause for a  
17 second. Dylan's trying to get us copies for the  
18 attorneys here.  
19 MS. KLAHN: Oh, I'm sorry, sure.  
20 MR. ANDERSON: TJ, was that part of the group  
21 that you had, or is this just unique to Sarah's?  
22 MR. BUDGE: That's in the group of documents  
23 Sarah emailed.  
24 MR. ANDERSON: Okay. I don't have a printout  
25 of that one. I think I could quickly send you a digital

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1 copy.  
2 MR. SIMPSON: Yeah, that's great.  
3 MR. BAXTER: Dylan, could you send me one too,  
4 please?  
5 MR. ANDERSON: Yeah.  
6 MS. KLAHN: I apologize, Garrick. I  
7 completely forgot that you wouldn't have seen -- you  
8 wouldn't have a copy of this, so I apologize.  
9 MR. BAXTER: No worries. I'm comfortable  
10 moving forward.  
11 MR. ANDERSON: Can we just state --  
12 Q. (BY MS. KLAHN) Mr. Anders, could you identify  
13 [Exhibit 13](#) for the record, please.  
14 MR. BAXTER: Hold on, Sarah. Dylan was  
15 talking when you started.  
16 MS. KLAHN: Oh, I'm sorry. I thought you said  
17 you were ready to move forward.  
18 MR. BAXTER: I was, but then Dylan piped up.  
19 MR. ANDERSON: My fault, Sarah. Your email is  
20 just not coming up.  
21 MR. BAXTER: So it's my first name, Garrick,  
22 G-a-r-r-i-c-k, dot Baxter, B-a-x-t-e-r, @idwr.idaho.gov.  
23 MR. ANDERSON: Now it comes up after I type  
24 it.  
25 MR. BAXTER: Isn't that always how it works?

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1 MR. ANDERSON: And yours should come up. It  
2 should be on its way.  
3 (Discussion held off the record.)  
4 MR. BAXTER: All right. Dylan said he's sent  
5 it, but I'm okay with going ahead and moving forward,  
6 Sarah.  
7 MS. KLAHN: Okay. Thank you.  
8 Q. (BY MS. KLAHN) Third time's a charm. Could  
9 you identify [Exhibit 13](#), please?  
10 A. It looks like a PowerPoint that is printed out  
11 with the title, "Proposed Modification to Develop" --  
12 I'm sorry, "Proposed Modification for Determining  
13 Reasonable in-Season Demand for the Surface Water  
14 Coalition: Irrigated Acres For SWC Members. Presented  
15 to the SWC Methodology Technical Working Group by Matt  
16 Anders, February 19th, 2015."  
17 Q. Do you recognize this document?  
18 A. Yes, it looks like I made it.  
19 Q. Could you turn to the second page?  
20 A. "Irrigated Acres" at the top?  
21 Q. Yeah. Okay. So the -- actually, let's just  
22 go to the third page, the "Summary of irrigated acres."  
23 A. Yep.  
24 Q. This table shows the irrigated acres that were  
25 known, I guess, at the time.

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1 Do you know what the source of these columns  
2 is?  
3 A. I remember that these were -- the information  
4 that we had available when we were doing the technical  
5 working group, you know, SPF there 2005 to 2007, that's  
6 from SPF Consulting. It was somewhere -- I don't  
7 remember off the top of my head where that came from.  
8 And then the partial decrees were information that we  
9 had. And then the 2013, that was the shapefiles that we  
10 had for each of the members. And then, finally, what we  
11 were using for the irrigated acres.  
12 Q. And I think that 2005 to 2007 SPF number, I  
13 mean, subject to check, I'll just tell you, I think that  
14 is the number that was developed by the groundwater  
15 users in the hearing that's referenced in the record  
16 cites that we were just talking about. So I think that  
17 might be where that came from. But it doesn't really  
18 matter today.  
19 Let's turn to page 4. And you have stated  
20 there the legal standard to -- for the Department to  
21 administer to less than the full amount of acres on the  
22 face of the partial decrees.  
23 What's your understanding of that? I  
24 understand that you're not a lawyer, and Garrick's going  
25 to object and say I'm asking for a legal conclusion, but

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1 I'm not. You are a technical person who's forced to  
2 cross that interface from time to time.  
3 How do you understand that legal standard that  
4 is quoted there?  
5 A. So the standard is "if the Department is going  
6 to administer to less than the full amount of acres set  
7 forth on the face of the Coalition's partial decrees,  
8 such a determination must be supported by clear and  
9 convincing evidence."  
10 Q. Okay.  
11 MR. BAXTER: So I will just go ahead and, for  
12 the record, make the objection as to it's asking for a  
13 legal conclusion because I do believe it is.  
14 But go ahead and answer the question, Matt.  
15 Q. (BY MS. KLAHN) Well, my next question is:  
16 Have you had any discussion with anybody at the  
17 Department about what that standard "clear and  
18 convincing evidence" means?  
19 A. Yeah. During -- while we're drafting the  
20 order or while we were doing the analysis, we talked  
21 internally about what that means, about what "clear and  
22 convincing" means. To me, that is -- just on a  
23 layman's, nonlegal type of thing, it means that it's a  
24 pretty high standard to meet, that you can't just say  
25 close enough. You need to have it laid out and very

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1 sure about the number that you're providing.  
2 Q. Would you agree that the flip side of that is  
3 that the Department should not be administering to acres  
4 that are hardened or otherwise can't be irrigated?  
5 A. If we can identify those and remove those, I  
6 think, yeah, we should. Those are not irrigated.  
7 Q. So if we flip back to page 3 of this -- where  
8 we were looking at that irrigated acres table.  
9 A. Yeah.  
10 Q. So the "2013 RISD" column on the end there,  
11 those are the acres you were using for purposes of the  
12 methodology order in 2013; is that your recollection?  
13 A. Yeah, I think that's accurate.  
14 Q. And then the Surface Water Coalition shapefile  
15 and partial decrees are shown in the two columns to the  
16 left?  
17 A. Yeah.  
18 Q. I want to focus on Twin Falls Canal Company  
19 for a moment.  
20 Can you sort of put side by side the irrigated  
21 acres table that's in [Exhibit 13](#) and the table on  
22 paragraph 22 of the Fifth Methodology Order?  
23 A. Yeah, I have them laying side by side.  
24 Q. Okay. So the Twin Falls Canal Company number  
25 used in the Fifth Methodology Order is 194,732; is that

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1 right?  
2 A. Yes.  
3 Q. And the number shown in the "2013 RISD" column  
4 was about, roughly, 10,000 acre-feet smaller than that.  
5 Do you see that?  
6 A. Yeah.  
7 Q. What happened that caused the Department to  
8 add acres to Twin Falls' irrigated acres?  
9 A. I don't know.  
10 Q. Were you involved in that decision to move  
11 Twin Falls from 183,000 and change to 194,000 and  
12 change?  
13 A. I don't remember, like, making that decision,  
14 but I would have been involved in it, yes.  
15 Q. Let's go back to the PowerPoint, [Exhibit 13](#),  
16 and let's look at the third sheet, next to the last  
17 page, that's titled "Shapefiles Submitted by SWC in  
18 2013"?  
19 A. Okay. Yep, I'm on that page.  
20 Q. Okay. So I see that there's some bullet  
21 points there, "Non-irrigated urban areas, farmsteads,  
22 and subdivisions." The next bullet point, "Overlaps and  
23 gaps." The next point, "Registration." The next point,  
24 "Land irrigated with supplemental groundwater is not  
25 segregated."

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1 What do those bullet points -- what are those  
2 telling us about -- why did you include those here?  
3 A. I don't remember exactly what I stated in this  
4 presentation that I gave to the technical working group.  
5 My best interpretation, from what I'm seeing, is types  
6 of things that are in these shapefiles that would make  
7 them less accurate in determining the irrigated acres.  
8 Q. Okay. Do you recall if the 2015 version --  
9 what did you say it was, in 2015 it became the Third  
10 Methodology Order?  
11 A. Yes.  
12 Q. Were irrigated acres changed in 2015 for the  
13 Twin Falls Canal Company? Sorry.  
14 A. I don't remember.  
15 Q. Well, we've checked, and it looks like the  
16 Department used the 183,000 number that's shown in your  
17 PowerPoint for Twin Falls through 2016. And it was  
18 after that that the Department moved to 194,000 and so  
19 on.  
20 Does that sound right to you?  
21 A. I don't -- I don't recall that change. I'm  
22 not disputing it. I don't recall.  
23 MS. KLAHN: I know it's lunchtime, but I have  
24 about 30 minutes more, and I would be done, at least for  
25 round one, subject to wanting to come back and ask about

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1 additional documents and so on that were provided today.  
2 What is the pleasure of the group? Should we  
3 go until 12:30 and take a lunch break then, or do you  
4 want to take a lunch break now and come back at 1:00?  
5 MR. BAXTER: Matt, what's your preference?  
6 THE WITNESS: I'm flexible. I could go either  
7 way.  
8 MR. BAXTER: Do you want to keep going?  
9 THE WITNESS: Yeah. We're on a roll; let's  
10 go.  
11 MS. KLAHN: He's having a good time, Garrick.  
12 He's loving it.  
13 THE WITNESS: I would disagree with that  
14 comment, but, no --  
15 MS. KLAHN: TJ, what is your thought?  
16 MR. BUDGE: Either is fine with me. Take your  
17 pick.  
18 MS. KLAHN: What about everybody else in the  
19 room, are your stomachs all going to rumble if we go for  
20 another 30 minutes?  
21 (Discussion held off the record.)  
22 MS. KLAHN: I'd like to mark another exhibit.  
23 And it is -- Andrea, it's an exhibit that has kind of a  
24 colorful map on the front, and it's "Idaho Department of  
25 Water Resources" in the upper left, and dated

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1 December 1st, 2022.  
2 (Discussion held off the record.)  
3 (Exhibit 14 marked.)  
4 Q. (BY MS. KLAHN) So let's take a look -- again,  
5 if you could keep the paragraph 22 table open on the  
6 Fifth Methodology Order, Exhibit 2 --  
7 THE WITNESS: Did you give me this, too?  
8 Q. (BY MS. KLAHN) -- and turn to --  
9 MR. BAXTER: Hold on, Sarah. Matt's trying to  
10 communicate with Andrea.  
11 COURT REPORTER: I might have given you an  
12 extra. Sorry.  
13 THE WITNESS: Okay. We're ready now. I had  
14 too many documents.  
15 Q. (BY MS. KLAHN) One got stuck together?  
16 A. Yes.  
17 Q. Let's turn to page, I believe it is, 19 of  
18 that document. And I don't see page numbers on mine. I  
19 apologize for that. It's a table called "Surface Water  
20 Coalition Irrigated Acres," and the columns are "Surface  
21 Water Coalition Member," "Created by SWC or IDWR" "Date  
22 of Shapefile" "Shapefile Acres," "CDL Processing Acres,"  
23 "NRT METRIC Processing Acres."  
24 Do you see that?  
25 A. Yep, I have that.

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1 Q. Can you just explain for the record, what is  
2 "Near Real Time METRIC"?  
3 A. So it is METRIC that's created in-season. As  
4 the season progresses with milestones that we wanted the  
5 data created. So like we wanted it by April through  
6 July and then monthly after that. So it's not exactly  
7 the same method as -- or procedure as METRIC, but it's  
8 very similar. It's just they had to change it to make  
9 it so we could do it in-season. METRIC is normally done  
10 after the season is complete, and then they do METRIC.  
11 This is actual while we're going through the season.  
12 Q. Is IDWR using near real time METRIC in any of  
13 its administration activities currently?  
14 A. Not that I'm aware of.  
15 Q. Is it a tool that might be available for  
16 administration?  
17 A. That is the idea why we -- we started -- we  
18 have had a contract with the U of I with Rick Allen and  
19 his group in, I want to say, like 2015 or '16. We've  
20 had several years of data. So we were trying to develop  
21 this concept in parallel, this procedure to see if we  
22 could get it to work for the methodology and elsewhere,  
23 so we've been working on this for a while.  
24 Q. Okay. And I think I may have -- did I say  
25 page 16 or page 19?

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1 A. 19.  
2 Q. The page I want to look at has a table that  
3 has -- the last two columns on the right are -- the  
4 farthest right is called "Methodology Acres." The  
5 second to the right is called, "If Remove Non-Irrigated  
6 Acres With 2017 Irrigated Lands Data Set."  
7 Do you see that?  
8 MR. BAXTER: So I think you're on 16, Matt. I  
9 think flip two more to 19.  
10 THE WITNESS: Okay. Yeah, now I'm on the  
11 right table.  
12 Q. (BY MS. KLAHN) Okay. I apologize for that.  
13 My notes weren't clear.  
14 In that table, if you look at Twin Falls Canal  
15 Company, in the middle column, it says, "If Remove  
16 Non-Irrigated Acres With 2011 Irrigated Lands Dataset,"  
17 and the total for Twin Falls Canal Company is 179,486.  
18 Do you see that?  
19 A. I do.  
20 Q. What is the derivation of that -- the acres  
21 shown in that column?  
22 A. So the irrigated lands data sets are created  
23 at IDWR. And, historically, they've been created by  
24 hand digitizing the fields on the ESPA for modeling  
25 purposes. So what they do is they are -- classified all

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1 land into irrigated, semi-irrigated, and nonirrigated.  
2 So what we did was we took the shapefiles that we had,  
3 and we did a GIS analysis with them to remove the  
4 portions that were nonirrigated. So the leftover was  
5 semi-irrigated and irrigated. So that number for that  
6 whole column is for each company what acres were left  
7 over once we made that analysis.  
8 Q. Okay. So the column I was just asking you  
9 about is the irrigated acres using the 2011 irrigated  
10 lands data set. If we move to the right, the title is  
11 "If Remove Non-Irrigated Acres With 2017 Irrigated Lands  
12 Dataset.  
13 Is that the same concept as what you described  
14 with the other column?  
15 A. The same concept, different year, yes. It's  
16 based on 2017. That one was based on 2017.  
17 Q. How frequently does IDWR update the irrigated  
18 lands data set?  
19 A. We have identified years that we want it done  
20 for purposes of calibration for our model, for the ESPA  
21 model. I don't know exactly, but we don't have it for  
22 every year, but there are quite a few years that we  
23 have. The most recent one we have available, as of -- I  
24 think I talked to the lady who works on it a couple  
25 weeks ago or maybe a month ago, was 2017 was the most

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1 recent one that we can use at this point. There's  
2 others in development, but they're not complete.  
3 Q. So the total for Twin Falls Canal Company in  
4 that next to the last column with the 2017 irrigated  
5 lands data set is 180,956. And then we go to the right,  
6 and we have the methodology acres for Twin Falls, which  
7 is 194,732, which matches what's in paragraph 22; is  
8 that right?  
9 A. Yes, you are correct.  
10 Q. So why did you recommend the use of 194,732  
11 instead of the lower numbers shown in the table that  
12 we're looking at on page 19?  
13 A. Because of that clear and convincing standard  
14 from the Wildman decision in 2014.  
15 Q. So you're more comfortable defending the Twin  
16 Falls Canal Company shapefile in front of a judge than  
17 the work of your own Department people --  
18 MR. BAXTER: Objection --  
19 Q. (BY MS. KLAHN) -- hand digitizing a map?  
20 MR. BAXTER: Objection; argumentative.  
21 Q. (BY MS. KLAHN) Well, I don't mean to be  
22 argumentative; I'm surprised.  
23 A. Let's use 2017. That data set is six years  
24 old this year. If you start looking at that data set,  
25 things have changed. Land that was classified as

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1 nonirrigated in that 2017 data set, in some cases, has  
2 become irrigated. So we would be removing acres that --  
3 or we would be not counting acres that were, in fact,  
4 irrigated, if you open them on the 2021 aerial  
5 photography. For me, that's not clear and convincing  
6 that those acres were not irrigated. So that was the  
7 standard that we were looking at.  
8 Q. So based on the [Exhibit 13](#) that we looked at,  
9 which showed the RISD -- I'm going to call them the RISD  
10 -- the methodology acres -- and you're welcome to pull  
11 that out again.  
12 So 2013, 2014, 2015, possibly 2016, the  
13 Department used 183,589 acres for Twin Falls Canal  
14 Company. And the Twin Falls Canal Company submitted the  
15 shapefile in 2013, submitted -- if you compare it with  
16 [Exhibit 14](#), submitted a shapefile acreage that was  
17 almost the same, 194,727.  
18 I guess I'm just curious about if the Twin  
19 Falls shapefile wasn't good enough up through 2015 or  
20 2016, why is it good enough now, particularly, if you  
21 haven't done any actual independent analysis of what's  
22 good enough now?  
23 A. I don't remember why we -- why the acres  
24 changed at that point in 2016.  
25 Q. The acres changed in 2016 to 194,000, let's

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1 say, 732, probably the same as now. Even though you  
2 had, in 2017, an irrigated lands data set that showed  
3 Twin Falls to be, roughly, 14,000 less than the  
4 methodology of acres; is that right?  
5 A. Yes.  
6 Q. So if the Department is provided with clear  
7 and convincing evidence -- I'm sorry, let me withdraw  
8 that.  
9 If the Department is provided with an analysis  
10 of irrigated acres for the Twin Falls Canal Company  
11 that's less than the Twin Falls Canal Company endorsed  
12 shapefile, what kind of an evaluation would you make of  
13 that information?  
14 A. Submitted from a third party, is that what  
15 you're suggesting?  
16 Q. For instance, in the hearing on June 4th or  
17 5th or 6th, or whenever we start, the groundwater users  
18 may want to do something like that. My question is:  
19 What kind of an analysis would the Department give that  
20 kind of a -- you know, that kind of evidence?  
21 A. I think we would review it on a -- using GIS  
22 and start comparing it to what we're seeing on the  
23 ground, you know, in air photos and try to evaluate  
24 what -- how it's characterizing the irrigated acres and  
25 nonirrigated.

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1 Q. Why haven't you done that with the Twin Falls  
2 shapefile?  
3 A. Right now to do an irrigated lands data set  
4 takes us about a year of one person's staff time. We  
5 know that that shapefile probably contains -- or does  
6 contain hardened acres, farmsteads, some roads. We  
7 don't have the staff time to create one of those every  
8 year for the methodology.  
9 We are -- we are investigating some automated  
10 methods, but right now we don't have that ability to  
11 create I think what it would take to be clear and  
12 convincing, which is to have a recent --  
13 Q. Well, but I mean, if I may?  
14 A. Go ahead.  
15 Q. It doesn't sound like the Department's number  
16 is clear and convincing either if it contains hardened  
17 acres.  
18 MR. BAXTER: Objection; argumentative.  
19 Q. (BY MS. KLAHN) I mean, flatfooted question:  
20 If the goal is to administer to irrigated acres, and the  
21 Department's irrigated acre number includes hardened  
22 acres, that's not clear and convincing either, is it?  
23 MR. BAXTER: Objection; calls for a legal  
24 conclusion.  
25 Q. (BY MS. KLAHN) You can answer.

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1 MR. BAXTER: Go ahead and answer.  
2 THE WITNESS: I guess the way that I see that  
3 statement -- I think I just read it here -- that  
4 statement is not an even playing field. It's saying if  
5 you can't clearly state why things should be removed,  
6 you have to go with the decreed acres. While we do know  
7 some of it's in there, I don't think we can clearly and  
8 convincingly come up with what should be taken out right  
9 now.  
10 Q. (BY MS. KLAHN) Thank you. If you're using  
11 the 2017 irrigated -- well, let me ask you this: Are  
12 you using the 2017 irrigated lands data set for  
13 modeling?  
14 A. I don't know the answer to that.  
15 Q. Would you think it would be important to have  
16 a similar number being used for modeling shortages and  
17 determining demand?  
18 I realize -- well, I'll just let you answer  
19 that question. Go ahead.  
20 A. We try to be as consistent as we can, yes.  
21 Q. I want to draw your attention to paragraph 23  
22 on page 10.  
23 A. Okay. I'm there.  
24 Q. That starts with the statement that, "There  
25 are lands within the Surface Water Coalition service

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1 area that are irrigated by supplemental groundwater."  
2 The next sentence says, "Supplemental groundwater is a  
3 factor that the Director can consider in the context of  
4 a delivery call."  
5 Have you ever been asked to do any analysis of  
6 the groundwater -- the acres that are served by  
7 groundwater in the Surface Water Coalition service  
8 areas?  
9 A. We discussed this topic in the 2015 technical  
10 working group about what data do we have, and can we  
11 determine the -- you know, when there's a supplemental  
12 groundwater water right, can we determine what portion  
13 of that, you know, the acres are irrigated with that.  
14 At that time, we didn't have a good enough data set to  
15 determine that. And that's still true today.  
16 Q. So in the last eight years since you looked at  
17 that in the 2015 technical work group, you haven't  
18 attempted to develop any data sets related to  
19 groundwater acres in Surface Water Coalition service  
20 areas; is that true?  
21 A. Not that I know of, that is true.  
22 Q. Is that a priority for the Department?  
23 A. We would like those data. Right now I don't  
24 think it is a priority right now for the Department.  
25 Q. What do you think would be required to develop



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1 a data set you'd be comfortable relying on to exclude  
2 acres from the irrigated acres piece of the demand side?  
3 A. That is difficult to determine the portion --  
4 so let's say you have somebody -- a farm that has canal  
5 shares on it, and then on top of it they have a  
6 supplemental groundwater right, it is really difficult  
7 to determine that.  
8 We've spent a lot of time in the Bear River as  
9 part of the Bear River Commission on that problem right  
10 there trying to find that out. I think it's more than  
11 just looking at water rights. Our experience there was  
12 is you have to get out and talk to the users to  
13 understand how they're using that supplemental right,  
14 when they're using it. I think that's why we don't have  
15 those data. It's hard to do. It's not just a remote  
16 sensing application.  
17 MS. KLAHN: Well, give me five minutes. Can  
18 we just go off the record for five minutes, and I just  
19 want to go through my notes one more time.  
20 MR. BAXTER: Sounds good. We're off the  
21 record.  
22 (Break taken.)  
23 Q. (BY MS. KLAHN) I just have one more question  
24 related to that last line of questions we were talking  
25 about.

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1 Mr. Anders, could you use pumping records to  
2 evaluate which acres are served by groundwater in the  
3 Surface Water Coalition service areas?  
4 A. I think, theoretically, yes, but you would  
5 have to understand the system. Like, do they have  
6 multiple pivots on one well and where it's all going.  
7 It's kind of the -- we've tried power consumption  
8 records in the past to do these type of things, and we  
9 hit the same problem.  
10 If you understand the system, probably. If  
11 you don't or they have a lot of configurations, like  
12 sometimes this one is on, sometimes that pivot is on, it  
13 makes it a lot harder and a lot more ambiguous.  
14 MS. KLAHN: Well, for today, that's all the  
15 questions I have for you subject to revisiting the -- or  
16 visiting, for the first time, I guess, the documents  
17 that were provided today by Sarah and that Garrick is  
18 going to get posted on the FTP site. And so with that,  
19 I'll see my time to lunch or TJ or whoever's going next.  
20 MR. BAXTER: It's 12:33. I would propose we  
21 break for lunch.  
22 MR. BUDGE: Garrick, mine will only take  
23 20 minutes.  
24 MR. SIMPSON: No, last time it was 10. So  
25 that's two hours if you're going to 20 minutes.

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1 MR. BUDGE: Lunch sounds good.  
2 (Lunch break taken.)  
3 MR. BUDGE: Thanks. Matt, before I get into  
4 your deposition, I just want to have the record reflect  
5 a conversation that we had before we started.  
6 The groundwater users have filed what's called  
7 a 30(b)(6) deposition notice for the Department, which  
8 was scheduled to commence after the deposition of Matt  
9 Anders, and counsel for the Department, Garrick Baxter,  
10 reported that the Department will not be producing any  
11 witnesses in response to that deposition notice. The  
12 only witnesses being Matt Anders and Jennifer Sukow  
13 pursuant to the order issued by the Director, I think it  
14 was, on May 5th.  
15 Is that correct, Garrick?  
16 MR. BAXTER: That is correct.  
17 EXAMINATION  
18 QUESTIONS BY MR. BUDGE:  
19 Q. Okay. Matt. Well, we're back. Hope you had  
20 a nice lunch break.  
21 A. Yeah, thank you.  
22 Q. We've met before. I'm TJ Budge, and for the  
23 record, I'm an attorney for Idaho Groundwater  
24 Appropriators, which typically goes by its acronym,  
25 IGWA, and we refer to as IGWA.

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1 I've got an outline of questions I want to ask  
2 you, and many of these topics have been addressed by  
3 Sarah Klahn, and so during the break I tried to, you  
4 know, cut out questions that may be duplicative. I may  
5 have some questions that overlap things Sarah asked  
6 about or ask for clarification or follow-up questions,  
7 but I'll try not to be too duplicative.  
8 To begin, at the beginning of your deposition,  
9 Ms. Klahn walked through your deposition notice and  
10 there were several categories of documents that you had  
11 been asked to bring to the deposition.  
12 Do you remember that?  
13 A. I do.  
14 Q. And I understood from your answers that you've  
15 produced all of the documents and information that had  
16 been provided to the Director in this proceeding except  
17 for those that you deem relate to the Director's  
18 deliberative process; is that correct?  
19 A. Correct, except the ones on the groundwater  
20 pumping and the additional sources; we were still  
21 collecting that information. But correct otherwise.  
22 Q. Thanks for that clarification. I do remember  
23 that answer. I have a question for your attorney.  
24 MR. BUDGE: Garrick, can we get a log of all  
25 of the documents and information provided to the

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1 Director that have not been produced? And I don't mean  
2 the contents of them, but a log similar to a privilege  
3 log that you would see for documents withheld due to  
4 privilege?  
5 MR. BAXTER: I'll ask the Director about that.  
6 I don't have an answer for you here today.  
7 MR. BUDGE: Okay. If you'll let us know in  
8 writing, Garrick, that would be appreciated.  
9 Q. (BY MR. BUDGE) Matt, I understand you  
10 contributed, in some fashion, to the Third Methodology  
11 Order and the Fourth Methodology Order?  
12 A. Correct.  
13 Q. When did you first learn that the Director was  
14 considering, potentially, amending the Fourth  
15 Methodology Order?  
16 A. My best estimate is it's sometime in the  
17 summer of 2015 or the fall of 2015. That's just an  
18 estimate.  
19 Q. I'm referring to updates to the Fourth  
20 Methodology Order.  
21 A. Oh, sorry. I thought you meant the -- when we  
22 were going to update the Third to the Fourth.  
23 Q. Yeah. So I'll restate the question for the  
24 record.  
25 When did you first learn that the Director was

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1 considering, potentially, amending the Fourth  
2 Methodology Order?  
3 A. Sometime in the summer of 2021.  
4 Q. Okay. And how was that communicated to you?  
5 A. I think that was informal communication within  
6 the Department.  
7 Q. From your perception, was the update to the  
8 Fourth Methodology Order, was that something where the  
9 Director was interested in updating the methodology, and  
10 so he advised staff that he may pursue that; or was that  
11 something where the staff felt there was a need to  
12 update the methodology, and they tried to persuade the  
13 Director that this was the time to do that?  
14 A. Generally, the communication is going both  
15 ways. We are working on the methodology, we have ideas  
16 that we pass to the Director, and he provides the input.  
17 Q. So back in the summer of 2021 when you first  
18 heard that the Director may consider updating the  
19 methodology, had you or other Department staff members  
20 been providing the Director with information indicating  
21 it needed to be updated?  
22 A. I'm not sure that we were saying that it  
23 needed to be. I think the discussion was more along the  
24 lines of the methodology says that it needs to be  
25 updated periodically, and it had been years since we had

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1 done it, and we were just needing to revisit and look at  
2 some of these. Things like the regressions we're  
3 constantly watching every year when we update those. So  
4 it wasn't like one thing where we just said this  
5 absolutely has to be. It was just time to start looking  
6 at it and making sure.  
7 Q. Okay. So one catalyst for updating the  
8 methodology was just the passage of time?  
9 A. I think that's part of it, one piece of it.  
10 Q. Yeah. What other rationale were given for  
11 updating the Fourth Methodology Order?  
12 A. We had been watching -- like I said, we've  
13 watched the regressions that we've used to forecast the  
14 natural flow supply. We had seen Twin Falls Canal  
15 Company, our regression declining somewhat, and we --  
16 that's one of the companies that first has a shortfall,  
17 if one does, so we wanted to make sure that we were  
18 comfortable with where that regression was.  
19 North Side is the same way -- or North Side  
20 was one that we were concerned about in July. Baseline  
21 year, when we selected baseline year, I want to say it  
22 was 100 -- just estimating, it was about 101 percent of  
23 average. So we knew that was relatively close, we  
24 needed to go back and look at some of these things,  
25 update the data and see where we were.

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1 Q. Did the Director give you any indications as  
2 to why he was interested in updating the methodology?  
3 A. I don't know what his thought process was  
4 other than that he is aware that, you know, the  
5 methodology says it needs to be periodically reviewed.  
6 Q. Fair enough. Matt, are you aware that there's  
7 a settlement agreement between IGWA and the Surface  
8 Water Coalition that was entered into in 2015 involving  
9 the coalition's delivery call?  
10 A. I'm aware of that agreement, yes.  
11 Q. Are you aware that some of the groundwater  
12 districts have -- are, allegedly, in breach of that  
13 agreement?  
14 A. I'm aware of that also.  
15 Q. Did that ever come up in discussions within  
16 the Department involving reviewing the Fourth  
17 Methodology Order?  
18 A. Not that I ever remember. Not that is  
19 expressed to me.  
20 Q. In the, what's labeled "Deposition Exhibit 4,"  
21 it's what I call the Department's preliminary  
22 recommendations. It's the one-page document that you  
23 and Kara Ferguson drafted, dated December 23rd, 2022.  
24 Do you know which document I'm talking about?  
25 A. Yeah, I think Garrick is getting it for me

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1 here. I don't -- I thought it was in my stack.  
2 MR. BAXTER: It will be in this stuff --  
3 folder.  
4 THE WITNESS: Oh, it's in there. Was it in  
5 the folder? You said 4, Exhibit 4?  
6 MR. BUDGE: Yes.  
7 THE WITNESS: Yes, I do have Exhibit 4 now.  
8 Q. (BY MR. BUDGE) If you look at the first  
9 sentence in the first paragraph, it refers to a status  
10 conference held August 5th, 2022, where the Director  
11 issued a directive to Department staff to convene a  
12 committee of experts to review the Fourth Methodology  
13 Order.  
14 Do you see that?  
15 A. Yes, I do.  
16 Q. Were you present during that status conference  
17 either in person or by video?  
18 A. I believe I was in person for that one.  
19 Q. Do you recall, during that status conference  
20 when the Director brought up this idea of changing the  
21 methodology order that I spoke up and raised a concern  
22 about due process and this happening in the context of a  
23 contested case, and we need to be cognizant of that?  
24 A. I do not remember that.  
25 Q. Okay. Are you aware that I subsequently sent

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1 emails to Department attorney, Garrick Baxter,  
2 expressing a concern about any update of the methodology  
3 needs to comply with the Administrative Procedures Act?  
4 A. I didn't -- I'm not aware of that, no.  
5 Q. Were you involved in any discussions within  
6 the Department about whether a hearing should be held  
7 before the methodology order is updated?  
8 A. Could you restate that?  
9 Q. Yes. Were you involved in any discussions  
10 within the Department as to whether a hearing should be  
11 held before the methodology order was updated?  
12 A. No.  
13 Q. To your knowledge, is there any reason why a  
14 hearing could not have been held before the Director  
15 issued a new methodology order?  
16 A. I think that's a legal question I'm  
17 unqualified to answer.  
18 Q. Are there any reasons that technical staff  
19 could not have participated in a hearing before the  
20 Director issued a new methodology order?  
21 A. We participate at the direction of the  
22 Director. He tells us if we're going to participate.  
23 Sorry, I may be too soft. He tells us if we're going to  
24 participate.  
25 Q. If the Director had told you he's going to

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1 hold a hearing before updating the methodology,  
2 Department staff would have participated in that  
3 hearing?  
4 A. If he directed us to, yes.  
5 Q. Okay. Who do you report to or who did you  
6 report to during this process of updating the Fourth  
7 Methodology Order?  
8 A. When we started, I reported to Sean Vincent;  
9 and when it finished, I reported to Mat Weaver. I was  
10 promoted in the interim of that time.  
11 Q. When did that transition happen from Sean to  
12 Matt?  
13 A. Early March. I don't know the date exactly,  
14 but, like, the first or second week of March.  
15 Q. Okay. So up through that time period, you  
16 would report to Sean and then after early March you were  
17 reporting to Mat Weaver?  
18 A. Correct.  
19 Q. Explain the process that was utilized within  
20 your part of the review of the Fourth Methodology, the  
21 technical aspect of it, after that August 5th status  
22 conference when the Director announced that he would  
23 take this on. Just explain what happened within your  
24 world.  
25 A. Okay. So I don't remember exactly when. At

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1 some point we were given guidance on topics from the  
2 Director that we should start reviewing, and then we did  
3 our reviews, and then we presented the results,  
4 preliminary results, to the Director. We -- to get his  
5 input. We took that input, in some cases we modified or  
6 updated or did additional analysis, and then we  
7 presented our analysis to the technical working group.  
8 Q. Just timewise just trying to, you know, fit it  
9 together, when did you get the list of topics that you  
10 were to undertake?  
11 A. I don't remember exactly. My best estimate is  
12 sometime after he announced it at that status  
13 conference.  
14 Q. And then when did you give your preliminary  
15 report to the Director?  
16 A. It was over a series of days. We covered five  
17 or six topics at the technical working group. It was  
18 probably somewhere between four or six times that we met  
19 with the Director to show him our preliminary results  
20 and discuss them.  
21 Q. And this happened prior to those  
22 November-December meetings when you were presenting to  
23 the outside consultants?  
24 A. Yes.  
25 Q. Back to the -- you know, stepping back in time

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1 to when you were given a list of topics to address, was  
2 that a collaborative process, or was that more of an  
3 instruction from the Director?  
4 A. I think it was both. I mean, informal  
5 conversations that we had had with the Director, and  
6 then, ultimately, he decides what we're going to  
7 address.  
8 Q. Was that list put in writing at some point?  
9 A. I don't remember it being in like a formal  
10 writing of any sort. I don't remember it being in an  
11 email either.  
12 Q. Are there any topics or technical analyses  
13 that were suggested for discussion that the Director did  
14 not, ultimately, direct Department staff to pursue?  
15 A. I don't remember any that we proposed that he  
16 declined or didn't recommend or didn't guide us on.  
17 Q. So there were no topics -- let me rephrase the  
18 question.  
19 At no point were you instructed not to pursue  
20 any particular technical aspect of the Fourth  
21 Methodology Order?  
22 A. No, I don't remember ever being told not to --  
23 or to stop reviewing something or to not review  
24 something.  
25 Q. Okay. Are there any analyses that Department

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1 staff wanted to do but they just didn't have enough time  
2 to complete it?  
3 A. Yeah. I think we would have liked to spend  
4 more time with the forecast supply. And that was  
5 discussed in the technical working group of things that  
6 we could look at to maybe make those regressions better.  
7 I would have liked to spend more time with Greg  
8 Sullivan's comments and maybe doing more testing and  
9 thinking about that with project efficiency. But that's  
10 all I can think of right now.  
11 Q. Was your inability to pursue those types of  
12 topics, was that because you had a deadline?  
13 A. I think it's partially a deadline, but also  
14 just the workload of what else we have to do at the  
15 Department. The Surface Water Coalition, while I would  
16 like to work on it full-time, the calculations, we  
17 just -- we have other things that we're assigned that we  
18 have to complete. So balancing all of that, there's  
19 just a limited amount that we can get done.  
20 Q. Yeah. I can appreciate that. I feel that in  
21 my line of work.  
22 And did you understand that the Director  
23 wanted to have a new methodology order issued before the  
24 2023 irrigation season?  
25 A. That was the general goal that I always

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1 understood was we were to get it completed for this --  
2 the 2023 irrigation season, yes.  
3 Q. Okay. And I know Sarah Klahn asked you about  
4 who participated -- I was making notes -- but I'm not  
5 sure I got it all straight. So I understand that on the  
6 demand side of the equation you took the lead, and on  
7 the supply side Kara Ferguson took the lead. And then  
8 you mentioned there was work done by Amanda Fowler?  
9 A. No, not on this --  
10 Q. Oh, not worked on by Amanda Fowler, okay.  
11 A. She worked -- she is a hydrologist at Water  
12 District 1 that works on the Snake accounting.  
13 Q. Okay. Gotcha.  
14 A. The other person -- well, at least I thought I  
15 mentioned -- was Ethan Geisler; he worked on the METRIC  
16 and presented that at the technical working group.  
17 Q. And then Jennifer Sukow?  
18 A. Of course, yes, Jennifer Sukow as well.  
19 Q. Did any Department staff members on the  
20 technical side besides you, Kara, Jennifer, and Ethan  
21 participate in reviewing the Fourth Methodology Order?  
22 A. Can you repeat that question?  
23 Q. Are there any technical staff at the  
24 Department that participated in reviewing the Fourth  
25 Methodology Order other than you, Kara, Jennifer Sukow,

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1 and Ethan Geisler?  
2 A. I can't think of anybody that assisted us.  
3 Q. To what extent did Sean Vincent participate?  
4 A. Sean is general supervision of us. I believe  
5 that he -- he was likely in some of the meetings but not  
6 all during the review process. I don't think -- I can't  
7 remember if he went to any of the technical working  
8 group meetings, attended it remotely. I can't remember.  
9 Q. Okay. And then to what extent did Mat Weaver  
10 attend the technical meetings?  
11 A. He wasn't in person that I remember. I think  
12 he listened remotely to at least one of the meetings.  
13 Q. Okay. And then if I'm just trying to make a  
14 list of the information that was presented to the  
15 Director for consideration, I'm assuming that your  
16 preliminary recommendations, that Deposition Exhibit 4,  
17 I'm assuming that was presented to the Director at some  
18 point?  
19 A. The word that I'm having trouble with there is  
20 "presented." You mean like formally like a  
21 presentation? Or we drafted it and gave it to him,  
22 would be a more accurate way than a formal presentation.  
23 Q. Okay. Maybe the word "provided"?  
24 A. I like that word.  
25 Q. So that document was provided?

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1 A. A draft of this document was provided.  
2 Q. Okay. When was that draft provided?  
3 A. I think the last technical working group  
4 meeting was around the 15th of December, and then we  
5 drafted this, and based on the fact that it came out on  
6 the 23rd, it had to have been in that about week window  
7 there between the 15th and the 23rd sometime.  
8 Q. Did you receive any feedback on the draft?  
9 A. Yeah, I think we received feedback and edits  
10 on that draft that we gave him.  
11 Q. Did the draft contain any recommendations that  
12 did not make it into the final document?  
13 A. No. There was one that we were unsure about  
14 was METRIC, about the staff commitment that it was going  
15 to take to do near real-time METRIC. But I think this  
16 was our, after discussing it, was our recommendation.  
17 Q. What did the draft say about near real-time  
18 METRIC?  
19 A. I think it recommended to not try to implement  
20 it. We had -- we were unsure if we had the staff time  
21 for that component. Even though we think it's an  
22 improvement, we still think it's an improvement, it's  
23 unclear if we can do it on the time frames needed.  
24 Q. Yeah, I understand.  
25 What other documents were provided to the

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1 Director beside the -- what I'm calling the preliminary  
2 recommendation from you and Kara?  
3 A. For this document I think that's all that was  
4 provided, was this -- a draft of this.  
5 Q. The materials that were presented in November  
6 and December to the outside consultants, were those  
7 materials provided to the Director?  
8 A. I don't remember physically sending him the  
9 documents. I'm thinking that was unlike -- I think that  
10 was unlikely. But we were in communication with him  
11 about the -- what feedback we got from the -- during the  
12 technical working group meetings, which would have been  
13 finished before this.  
14 Q. Okay. The comments that Greg Sullivan and  
15 Sophia submitted on January 16th, were those provided to  
16 the Director?  
17 A. I don't know.  
18 Q. You didn't provide them to the Director, then?  
19 A. No.  
20 Q. In terms of just how information was  
21 communicated, was that meetings, presentations, personal  
22 conversations, emails; how did that happen?  
23 A. All of the methods that you just discussed are  
24 ways that we communicated with the Director and he  
25 communicates with us.

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1 Q. Gotcha. And it was kind of -- it sounds like  
2 it was kind of back and forth, the technical folks would  
3 communicate things to the Director, and you would  
4 provide feedback and input and things like that?  
5 A. I think that's an accurate description, yeah.  
6 Q. Was the Director involved from the beginning,  
7 from back in August, or did he not come in until later  
8 in the process?  
9 A. He was involved the whole time.  
10 Q. Gotcha. Okay. Let me take a step back. You  
11 mentioned that the idea of, potentially, updating the  
12 methodology, that first came to your attention in the  
13 summer of 2021; is that right?  
14 A. Correct. That's what I said, yeah.  
15 Q. What happened in that regard from that time  
16 until August of 2022 with regard to updating the  
17 methodology?  
18 A. We started reviewing pieces of the methodology  
19 in 2021.  
20 Q. What pieces did you start with then?  
21 A. I remember working on baseline year. I  
22 remember Kara was working on the forecast supply, and we  
23 were also working on -- Ethan was helping us with the  
24 near real-time METRIC. That's the three that I remember  
25 at this point. There could have been more, but I

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1 remember working on those three.  
2 Q. Gotcha. Was the Director also involved back  
3 then, at least from an oversight standpoint?  
4 A. Yes.  
5 Q. Did that work continue, you know, through 2022  
6 until we got to that August 5th status conference?  
7 A. No, it wasn't continuous until then, until  
8 2022.  
9 Q. What work was done, say, from January until  
10 August of 2022?  
11 A. I don't remember working on it, on the update  
12 during that time.  
13 Q. So there was some work done in 2021, and then  
14 it sounds like it was kind of -- you know, sat still for  
15 a period of time, and then it resumed in August of '22;  
16 does that sound fair?  
17 A. That sounds relatively -- yeah.  
18 Q. Did the folks that worked on the methodology  
19 in 2021, did you communicate your findings and analyses  
20 back then to the Director?  
21 A. Yes.  
22 Q. When you picked up the work in August of 2022,  
23 was your work on those topics, baseline year and the  
24 others, was that mostly completed, or was that -- were  
25 those topics that needed a lot more analysis?

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1 A. They needed -- you know, we had another year  
2 of data, so they needed to be -- that needed to be added  
3 to the analysis. And then I think we -- I was trying to  
4 think. Yeah, we, likely, did some additional analysis  
5 on it at that point.  
6 Q. Gotcha. Back in 2021 when you were doing your  
7 technical work, did you communicate with anyone outside  
8 the Department about that work?  
9 A. I did not, no.  
10 Q. What about from August of '22 until the Fifth  
11 Methodology Order was issued, at the end of April, did  
12 you communicate with anyone outside the Department about  
13 the technical work that Department staff had been  
14 performing?  
15 A. Repeat the question, please.  
16 Q. From August of '22 until the Fifth Methodology  
17 Order was issued in April of '23, during that time  
18 period, did you communicate with anyone outside the  
19 Department about the technical work the Department staff  
20 was doing on the methodology?  
21 A. Yes, the technical working group.  
22 Q. Yeah, very good. Other than the folks that  
23 participated in those November-December technical  
24 working group meetings did you communicate with anyone  
25 else outside the Department?

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1 A. I don't remember specifically talking to  
2 someone directly about the -- that were working on  
3 amending that, but I could have easily mentioned it to  
4 somebody, you know, like when we were doing the Swan  
5 Falls technical working group, in a side conversation or  
6 something like that; but not in any official, like,  
7 "We're doing this, and here's what we need," or "Here's  
8 what we want you to know."  
9 So it would be more on an informal basis,  
10 "Yeah, we got that going" or, "Yeah, we're working on  
11 that." The same could be true of -- we were at the Bear  
12 River Commission meeting, so we -- I may have mentioned  
13 it to somebody that we were doing that.  
14 Q. I understand. So there weren't any formal  
15 presentations concerning the work you were doing to  
16 folks outside the Department during that period?  
17 A. I don't remember any. I don't think there  
18 were any.  
19 Q. Okay. After the -- you and Kara issued your  
20 preliminary recommendations, that document dated  
21 December 23rd, 2022, did Department staff do any  
22 technical work after that date relating to the Fifth  
23 Methodology Order?  
24 A. After which date? Could you repeat that?  
25 Q. December 23rd of last year, that's the day

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1 that -- that's the date on this Deposition Exhibit 4,  
2 which is the preliminary recommendations that you and  
3 Kara authored.  
4 A. Yeah, we did additional analysis, reviewing  
5 the comments received from the technical working group  
6 and then additional analysis to prepare for the final  
7 order.  
8 Q. Okay. And was there continued dialog, you  
9 know, during the first four months of '23 until the  
10 Fifth Methodology Order was finally issued?  
11 A. I don't understand that question.  
12 Q. So I'm trying to, in my mind, envision -- I'll  
13 give you some context.  
14 You know, I'm wondering, did you, you know,  
15 hand off all the technical data in, say, January, and  
16 then from that point forward everything was just in  
17 the -- you know, the Director's camp; or was there  
18 continued dialog between technical staff and the  
19 Director or his staff, you know, throughout this year  
20 until the Fifth Methodology Order was issued?  
21 A. There was continuous or continued dialog  
22 between the Director and us.  
23 Q. And then I think you mentioned earlier that  
24 your -- the person you report to at some point shifted  
25 from Sean Vincent to Mat Weaver; I think that was early

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1 March?  
2 A. Correct.  
3 Q. I understand. The comments that Greg Sullivan  
4 and Sophia Sigstedt submitted on January 16th, who  
5 within the Department reviewed those comments?  
6 A. I reviewed those comments. I know that Kara  
7 Ferguson reviewed those comments. I cannot speak for  
8 other people and what they did with those comments.  
9 Q. Did you forward those comments to other folks  
10 within the Department?  
11 A. Yes.  
12 Q. And who would that be?  
13 A. We would have forwarded them to legal counsel  
14 and the Director.  
15 Q. During this time -- you know, we can go back  
16 all the way until, you know, summer of '21 until the  
17 Fifth Methodology Order was issued last month, was there  
18 anything you were instructed not to do or analyze or  
19 evaluate?  
20 MR. BAXTER: Objection. I think he's already  
21 answered this question.  
22 But, that said, go ahead and answer the  
23 question, Matt.  
24 THE WITNESS: I don't remember being  
25 instructed to stop working on something.

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1 Q. (BY MR. BUDGE) Are there topics you were  
2 instructed not to examine?  
3 A. No. We followed the guidance of the Director  
4 with the topics he wanted addressed.  
5 Q. Is there any information or data that is  
6 included in the Fifth Methodology Order that you  
7 disagree with?  
8 A. Please restate the question.  
9 Q. Is there any information in the Fifth  
10 Methodology Order that you disagree with?  
11 A. No.  
12 Q. Is there anything in there that -- is there  
13 anything not in the Fifth Methodology Order that you  
14 think should have been included?  
15 A. No.  
16 MR. FLETCHER: Did he hear your answer?  
17 MR. BAXTER: TJ, did you hear his last answer?  
18 MR. BUDGE: I did not.  
19 THE WITNESS: Oh, sorry. I said "no." I was  
20 waiting for you --  
21 MR. BUDGE: Thanks, Matt. There must have  
22 been a glitch or something like that, so thank you for  
23 calling that out.  
24 Q. (BY MR. BUDGE) So just thinking about just,  
25 you know, how long it took to develop this, it sounds

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1 like Department staff worked for a number of months in  
2 '21 and then worked from last August until, you know,  
3 April, you know, to finally develop this, so, you know,  
4 if you can just give me a rough estimate of the number  
5 of months that the Department worked on developing the  
6 Fifth Methodology Order, I'd appreciate that.  
7 A. I would estimate not continuously but parts of  
8 maybe 10 or 12 months.  
9 Q. Okay, thanks. That helps me. Let me ask  
10 about the April 2023 As-Applied Order.  
11 Were you involved in the preparation of that  
12 order?  
13 A. I was.  
14 Q. And did Sarah walk through that with you and  
15 identify the parts of that order you contributed to?  
16 A. She did not.  
17 Q. I didn't think so, but there was a period of  
18 time where I was multitasking.  
19 MR. BUDGE: If the deponent could be presented  
20 with Deposition Exhibit 3.  
21 THE WITNESS: Is that in this book?  
22 MR. BAXTER: Yes.  
23 THE WITNESS: Okay. I have it.  
24 Q. (BY MR. BUDGE) Do you recognize that as the  
25 April As-Applied Order?

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1 A. Yes.  
2 Q. Can you just walk me through it and just  
3 identify the parts of this order you contributed to?  
4 A. Yes. So I'm on page 1. We do the -- Kara and  
5 I, generally, do the first draft of this order, so we  
6 would have updated the year and the title; and then  
7 paragraph 3, 4, and 5 would have been updated. The  
8 table under 6 would have been updated, or we would have  
9 proposed edits. When I say "updated," we would have  
10 proposed edits in those sections. Section --  
11 Q. Let me interrupt, Matt.  
12 A. Sure.  
13 Q. When you say "edits," it sounds like what  
14 you're doing is you're using the As-Applied Order from a  
15 year prior, and then you're just tweaking it to reflect  
16 current conditions?  
17 A. It may not be the year prior, but it is --  
18 normally, we start with a previous version of the same  
19 type of year. So if it doesn't have a shortfall, we  
20 choose a year to start with from a previous for  
21 consistency. But, yes, so that is how we do this.  
22 Q. Okay. That makes perfect sense. I just  
23 thought that would be helpful for the record.  
24 A. I think I was on page 2. 8, paragraph 8;  
25 paragraph 9 would have had edits; paragraph 10;

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1 paragraph 11; the table under 12 would have had proposed  
2 edits; 14, on page 4, would have had proposed edits; 15  
3 would have had proposed edits, but those would have been  
4 done by Jennifer Sukow; and then 16, the same, Jennifer  
5 Sukow.  
6 I would not have -- well, I was about to say,  
7 I wouldn't have touched "conclusions of law," but then  
8 on page 5 there is "The Joint Forecast" under  
9 paragraph 5, we would have updated that; and 6 there's a  
10 shortfall there; Jennifer would have done some editing  
11 in 7, and so there is a shortfall in there, we would  
12 have also edited that. And then on page 6, the final  
13 paragraph, where it's -- I guess it's just under the  
14 order, we would have updated proposed edits there as  
15 well. And I think -- and then Attachment A, page 1  
16 through 4 -- yeah, page 1 through 4, we would have  
17 proposed updated figures there.  
18 Q. Thanks, Matt. I don't have any questions  
19 about this at this time, but I may come back to it  
20 later, so that's helpful.  
21 Let me have you turn to Deposition  
22 Exhibit 5 -- or, excuse me, Deposition Exhibit 2, which  
23 is the Fifth Methodology Order.  
24 A. Okay. I have it.  
25 Q. I've got a number of questions about the

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1 baseline year. And I know Sarah asked you several  
2 questions, so I'll try not to duplicate them, but I want  
3 to make sure I have a clear understanding of your  
4 answers and how that process worked.  
5 Let's begin by just turning to page 3.  
6 A. Okay. I'm on page 3.  
7 Q. And if you look at paragraph 7, it reads, "A  
8 baseline year is a year or average of years when  
9 irrigation demand represents conditions that can predict  
10 need in the current year of irrigation at the start of  
11 the irrigation season."  
12 Do you see that?  
13 A. I see that, yes.  
14 Q. The baseline year is, essentially, just a  
15 volume of water that we assume the Coalition may need to  
16 grow crops that year?  
17 A. Yes, by company.  
18 Q. By company?  
19 A. But it's not one volume, yep.  
20 Q. Thank you for the clarification. And just so  
21 I understand, the baseline year does not -- the way the  
22 Department has selected that, they've not selected the  
23 year of the most likely water needs of each member of  
24 the Surface Water Coalition; they are -- you're  
25 intentionally selecting a year that assumes

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1 greater-than-average water demand?  
2 A. Correct.  
3 Q. I see. And then that paragraph we just read  
4 it says it can be a single year or an average of years  
5 to represent that above-average demand?  
6 A. Yes.  
7 Q. Rather than selected baseline year volume that  
8 perfectly matches a prior year or an average of prior  
9 years, has Department staff ever considered just  
10 selecting a volume that's above average, whether or not  
11 that volume was diverted in any particular year?  
12 A. I think we've had, at a technical level -- I  
13 cannot speak for the Director or anyone else -- at a  
14 technical level, we have discussed that informally.  
15 Q. And what would you see being the pros and cons  
16 of that type of approach?  
17 A. I'll start with the cons. What number is it  
18 going to be? How do you justify that number?  
19 Everything we do in the methodology is going to get  
20 scrutinized, so we have to come up with a reason why  
21 we're doing it. So that's the con, like what could we  
22 do.  
23 The pro of doing something like that is maybe,  
24 possibly, we could -- we could make it -- you know, take  
25 other considerations into -- you know, adjustments of

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1 some kind into it. We could adjust the number based on  
2 the season or based on things like that. It would be a  
3 little more flexible. I guess that was a long way  
4 around to say it's a little more flexible. Sorry.  
5 Q. Yeah, I understand. And maybe to give you a  
6 hypothetical: If the years that met the criteria you  
7 didn't feel were the best representations of water  
8 demand, that flexibility would maybe allow you to select  
9 a volume that's, you felt, more representative of likely  
10 water demand for the Coalition?  
11 A. Possibly. Possibly.  
12 Q. Okay. Let's look at that same page. And if  
13 we look at paragraph 8, there's three factors that are  
14 considered: "climate; available water supply; and  
15 irrigation practices." And just summarizing  
16 paragraph 9, as I understand it, the selection criteria  
17 set forth in the Fifth Methodology Order looks for years  
18 that have above-average temperature, below-average  
19 precipitation, and above-average diversions?  
20 A. Those are three of the five criteria that we  
21 look at.  
22 Q. Okay. And tell me the other two criteria.  
23 A. Growing degree days and limited supply.  
24 Q. And "limited supply" or "unlimited supply"?  
25 A. Supply not limited, you are correct.

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1 Q. Yes, supply not limited.  
2 A. Thank you.  
3 Q. Let me ask you about that last factor. And I  
4 think we've got to flip to the next page. It's at the  
5 bottom of paragraph 9, but it's on page 4 of the order.  
6 A. Okay. I think I'm there.  
7 Q. It's the last sentence. It says, "actual  
8 supply should be analyzed to assure that the baseline  
9 year is not a year of limited supply."  
10 Explain the thinking behind that criteria.  
11 A. My interpretation of that is they have the  
12 water that they want to put to use, it's available to  
13 them. They aren't limited in some other way, like they  
14 would use more water if they had it, if they could get  
15 it, but it's just not there. It's a short water supply,  
16 storage wasn't enough.  
17 Q. The way I read this, they're selecting a year  
18 that does not have a constrained water supply. It's  
19 got -- that the water supply is not limited.  
20 Is that right, or am I not understanding that?  
21 A. I think you're correct, that it's not limited.  
22 Q. Meaning they have more water to divert if they  
23 want it?  
24 A. I don't know about more, but they have what  
25 they need. It is available for what they need or what



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1 they demand for their crops.  
2 Q. Gotcha. If we look at the prior sentence, one  
3 of the factors is that you're going to strive to "select  
4 a year of below-average precipitation to ensure that  
5 increased diversions were a function of crop water need  
6 and not other factors."  
7 What types of other factors besides crop water  
8 need would compel a member of the Coalition,  
9 potentially, to divert water?  
10 A. They also divert additional water for, like,  
11 carrying water; you know, there's additional water they  
12 need just -- not just what the crops need to get it to  
13 their fields. So there is additional water there that  
14 they need.  
15 Q. Does some of the Coalition members also divert  
16 water for their hydropower generation?  
17 A. I don't know.  
18 Q. Is that something that Department staff has  
19 analyzed?  
20 A. I have not analyzed it. I don't know if  
21 someone else has analyzed that.  
22 Q. You may not know the answer to this question,  
23 but in years where there's plentiful natural flow, you  
24 know, above-average water supply years, is it your  
25 understanding that canal companies may divert as much

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1 water as they can get in the canal because it makes  
2 management of the supply more convenient?  
3 A. I don't know the answer to that.  
4 Q. Okay, fair enough.  
5 In terms of selecting the baseline year, the  
6 Director ultimately makes the decision; right?  
7 A. Yes.  
8 Q. And then the role of staff is to arm him with  
9 the data to help him make the best decision?  
10 A. I believe that is our role, yes.  
11 Q. I understood from some of the data presented  
12 that there were two years that met the criteria for  
13 selecting a baseline year, 2018 and 2020; is that right?  
14 A. Yes.  
15 Q. Did staff provide the Director with data  
16 showing that 2020 was also a qualifying year?  
17 A. Yes.  
18 Q. Did staff provide the Director with  
19 information about any other ways of, potentially,  
20 selecting a baseline year?  
21 A. That question is unclear to me. Could you  
22 state it slightly different or repeat it?  
23 Q. Did staff identify any alternate ways to  
24 determine the baseline year and present that to the  
25 Director for consideration?

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1 A. I feel like this is getting partially into the  
2 deliberative process of the Director here about what we  
3 present to him and how we communicate with him.  
4 Q. Yeah. And I don't need you to answer the  
5 latter part. I'm just trying to find out what  
6 information was presented to him to consider.  
7 So was information presented to the Director  
8 about potential alternatives to 2018 or 2020 as the  
9 baseline year?  
10 A. I think in a general sense we did discuss that  
11 in looking at the question. If we -- and just generally  
12 speaking, like, if we don't use -- we have two years  
13 that qualify, that meet the criteria -- if we don't use  
14 those years, what else would we use. As just kind of a  
15 general discussion about what our options are.  
16 Q. Okay. I understand. That makes sense. If I  
17 have you look again at Deposition Exhibit 4, which is  
18 that December document that you and Kara Ferguson  
19 authored, the preliminary recommendations.  
20 A. Yes.  
21 Q. How come that doesn't identify 2020 as a  
22 potential alternative way to select a baseline year?  
23 A. Under bullet -- the first bullet there, like  
24 three-quarters of the way down, is that what you're  
25 talking about, where we just talk about '18?

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1 Q. Right. Yeah.  
2 A. Okay. At that point this is our  
3 recommendation. Our recommendation was 2018.  
4 Q. And was that at least partly based on feedback  
5 you had received from the Director, you know, before  
6 that date?  
7 A. Yeah, I think he had provided input on when we  
8 presented it to him before the technical working group  
9 meetings.  
10 Q. Okay. I understand.  
11 MR. BUDGE: Dylan, could you hand Matt, to be  
12 marked as an exhibit, or the Reporter, a copy of Sophia  
13 Sigstedt's comments that she submitted on January 16th.  
14 The document has a Lynker logo at the top, and it's  
15 titled, a "Memorandum" to Matt Anders and Kara Ferguson  
16 from Sophia Sigstedt and dated January 16th, 2023.  
17 MR. ANDERSON: Yes, TJ. Sorry I didn't  
18 answer.  
19 (Discussion held off the record.)  
20 (Exhibit 15 marked.)  
21 Q. (BY MR. BUDGE) Do you recognize this  
22 document, Matt?  
23 A. Yes, I do.  
24 Q. You've seen this before?  
25 A. Yes, I have.

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1 Q. Okay. I want to ask you about some of the  
2 suggestions Sophia had made here.  
3 A. Okay.  
4 Q. Let's begin by turning to page 2. And at the  
5 top there's a paragraph or section No. 1, and Sophia  
6 makes the suggestion that the Department consider rank  
7 within the period of record and select an average in  
8 years closer to the rank of the '06, '08, '12 baseline  
9 year selected in 2015.  
10 Do you remember reviewing Sophia's comments in  
11 this regard?  
12 A. I do.  
13 Q. What do you think about her suggestion?  
14 A. The methodology lays out the criteria that we  
15 are going to use for selecting the baseline year. If  
16 we -- we would have to modify the order to add that as a  
17 criteria.  
18 Q. Did you discuss with Sean Vincent or Mat  
19 Weaver that possibility that Sophia had suggested, you  
20 know, we could do this to identify -- or to designate a  
21 different baseline year?  
22 A. I don't think that I -- I didn't recommend it  
23 to either one of those people.  
24 Q. Okay. This suggestion, then, it sounds like,  
25 didn't make it to the Director?

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1 A. I did not recommend it to the Director as a  
2 change to make.  
3 Q. Okay. You may have answered this: Was her  
4 report forwarded to your superior at the time, either  
5 Sean Vincent or Mat Weaver?  
6 A. I think the last -- I answered the question  
7 last time, the legal -- that I forwarded to legal staff  
8 and the Director.  
9 Q. That's right. That's correct. I apologize  
10 for forgetting that.  
11 If the Director was open to the idea of  
12 changing the criteria for selecting the baseline year,  
13 what do you think about Sophia's suggestion?  
14 A. I think it's similar to your question about  
15 could you just choose an average diversion. You can use  
16 rank, but you have to justify it in some way, like  
17 rationalize this is why we're using this rank. I think  
18 it's a good way to characterize the data to determine  
19 where you are in the body of the data, but I wasn't able  
20 to -- in thinking about her proposal -- come up with a  
21 rank that I could justify in some way. And, you know, I  
22 thought about it, like how would I do that. And I  
23 wasn't able to come up with something that I was willing  
24 to recommend to the Director.  
25 Q. It sounds like that might require some

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1 exercise of discretion by the Director?  
2 MR. BAXTER: Objection; calls for a legal  
3 conclusion.  
4 But to the extent you can answer the question,  
5 Matt, go ahead and answer the question.  
6 THE WITNESS: I think that falls under  
7 discretion.  
8 Q. (BY MR. BUDGE) Yeah, okay. Let me ask -- if  
9 we flip to page 4 --  
10 A. Yep, I'm there.  
11 Q. -- at the top of page 4 there's a paragraph  
12 No. 2, it's another suggestion that Sophia had made.  
13 And I'll just read the first sentence.  
14 It says, "Another better alternative would be  
15 to use diversion demands for the '06/'18 irrigation  
16 seasons for the baseline year," because they were unique  
17 hydrologic circumstances in 2018 that she doesn't  
18 believe represents a typical dry year.  
19 Do you remember this part of her comments?  
20 A. I do.  
21 Q. Do you agree that the hydrologic conditions in  
22 2018 were unique, as Sophia describes in that paragraph?  
23 A. I don't know if I'd use the word "unique"  
24 there. It was a year that we were coming off -- 2017  
25 was the previous year, a really good water year, the

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1 base flow was good, lots of carryover, so the supply was  
2 really good going into 2018, and, for the most part, for  
3 the first half.  
4 Q. And then I think it had, like, zero  
5 precipitation in July, or something like that; right?  
6 A. And that's why it qualified for a baseline  
7 year under our criteria. It got really hot and dry.  
8 Q. Yeah.  
9 A. I mean, that's what our criteria are looking  
10 for is a warm, dry, you know, less-than-average  
11 precipitation season.  
12 I think she did talk about, you know, as far  
13 as unique, there was no precipitation in, maybe, July,  
14 August, or September. That is unique, but the  
15 precipitation is normally low in those months anyway. I  
16 mean, it's not uncommon to have very low precipitation  
17 in those months.  
18 Q. If the Director were to consider changing the  
19 selection criteria for the methodology -- or, excuse me,  
20 for the baseline year, do you think considering  
21 diversion demands, like Sophia had suggested, is worthy  
22 of consideration?  
23 A. I think we do consider diversions. It's above  
24 average. That's what we're looking -- that's what we're  
25 trying to get, warm, dry seasons, so we're looking for

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1 higher diversions.  
2 Q. I think you've answered other questions like  
3 that on this topic, so I'm going to move on and ask a  
4 few questions just about the forecast supply. And we  
5 can turn back to the Fifth Methodology Order, which you  
6 should have in front of you.  
7 A. Yep, I do. Can you give me the exhibit number  
8 again? Is that 2?  
9 Q. Yes. Okay. I changed my mind, Matt. I want  
10 to have you look at the technical working group  
11 presentation dealing with the April and July forecast  
12 supply. I don't know what the number is, but I'll see  
13 if I can find it.  
14 MR. BUDGE: This may not have been made an  
15 exhibit yet. Unless someone else is aware of the  
16 November 17th presentation to the technical working  
17 group regarding April and July forecast supply, unless  
18 someone else has that marked as an exhibit, Dylan, I'll  
19 need you to pull that out.  
20 MR. BAXTER: Dylan's grabbing it.  
21 THE WITNESS: I'm going to show this, TJ. Is  
22 this the one that you're --  
23 MR. BUDGE: Not that one. It's the same date,  
24 but at the bottom it says, "April and July Forecast  
25 Supply."

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1 MR. BAXTER: By Kara Ferguson?  
2 MR. BUDGE: Yeah, by Kara Ferguson.  
3 MR. BAXTER: Let me just compare to make sure  
4 I got an accurate copy here. This one has page numbers  
5 on it. Yes.  
6 MR. SIMPSON: It's too late for him to give it  
7 back.  
8 MR. FLETCHER: What's the date on it?  
9 MR. SIMPSON: November 17th.  
10 MR. FLETCHER: Of '22?  
11 MR. SIMPSON: Yeah.  
12 MR. BAXTER: July forecast. Yep, cool.  
13 ([Exhibit 16](#) marked.)  
14 Q. (BY MR. BUDGE) You've got that in front of  
15 you, Matt?  
16 A. I do. We're ready.  
17 Q. Do you recognize it?  
18 A. I do.  
19 Q. And that's the presentation given to the  
20 technical working group on November 17th of '22;  
21 correct?  
22 A. I think it is. But what I was looking for is  
23 Kara sent some follow-up information, but I can't  
24 remember, off the top of my head, if she updated her  
25 presentation. So this is either the original or a

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1 slightly modified after we got the input, but it has,  
2 roughly, the same data; it would have been minor if it  
3 didn't.  
4 Q. Okay. And I'll note that I've added page  
5 numbers to the bottom right-hand corner of the slide.  
6 It's just for ease of reference.  
7 A. Thank you.  
8 Q. If you'll turn to slide 9.  
9 A. Yep, I'm there.  
10 Q. This shows the R-squared value for the  
11 regression models for each of the SWC members; correct?  
12 A. Yes.  
13 Q. And they're pretty constant except for Twin  
14 Falls Canal Company. And if you look at the tables, I  
15 understand that the R-squared value has degraded over  
16 time. It's gone from .86 in 2014 to .84 in 2016, .83 in  
17 2018, .8 in 2020, and then drops all the way down to .72  
18 in 2022.  
19 Do you have any ideas as to why the R-squared  
20 value is degrading?  
21 A. We don't. We have -- we wonder if it's Box  
22 Canyon. Box Canyon is the predictor variable. One of  
23 the predictors here, Heise and Box Canyon are used on  
24 these. We're wondering if it's that, but we're not  
25 sure.

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1 Q. Have you identified any other potential  
2 contributing factors?  
3 A. At this point, no.  
4 Q. Has the Department undertaken to look into  
5 this to try to get to the bottom of it?  
6 A. Yes. This is one that concerns us, the  
7 degradation that you -- and the R-squared that you  
8 pointed out, we watch it every year. We haven't found  
9 what we think is a reason for it. We have some ideas.  
10 At least on the technical level, Kara and I have talked  
11 about do we need to -- do we need to find something  
12 else. Do we need to do something else with this.  
13 We, ultimately, decided that we would watch it  
14 another -- you know, just watch it year to year and see  
15 what happens to it. But we're -- we think we're kind of  
16 on the -- we're getting close to the -- we'll have to do  
17 something if it continues to degrade. And that's  
18 because -- I'm sorry, go ahead.  
19 Q. No, I didn't mean to cut you off. Go ahead  
20 and finish, Matt.  
21 A. That's just because Twin Falls Canal Company  
22 has the first one that has a shortfall, so this one  
23 means it has a lot of meaning to the shortfall. So we  
24 are watching this one closely.  
25 Q. Thank you for doing that. I appreciate the

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1 attention you're giving to that because, as you know, it  
2 is significant. And I know you're the scientist, and  
3 I'm not.  
4 Can you just explain to me why degradation of  
5 the R-squared value is important or significant?  
6 A. The R-squared is an indicator about how well  
7 the regression is predicting what we're trying to  
8 predict, which is, in this case, in natural flow. So  
9 it's an indicator of, you know, how well it explains  
10 variability in the data. And it's a very common  
11 variable that people use to evaluate their regressions.  
12 The lower that number gets, the less power your  
13 prediction is.  
14 Q. That's what I understood, but I appreciate  
15 that explanation.  
16 And I think you mentioned at some point if the  
17 R-squared gets too low, you've just got to look for some  
18 other mechanism to try to, you know, predict supply?  
19 A. Yes.  
20 Q. Has the Department staff started to look at  
21 any alternatives than the current regression equation?  
22 A. As part of the technical working group, Kara  
23 did some additional work. She used the Sentinel well  
24 index for the settlement agreement, and she used another  
25 well, and I don't -- off the top of my head, I don't

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1 know where it was or what the well number was, but she  
2 did look at a slightly different well based on a  
3 discussion that we had at the technical working group.  
4 Q. Okay. This is something that's happened since  
5 that technical working group meeting?  
6 A. Yeah, she presented at the technical working  
7 group and then worked on it and sent it back, kind of a  
8 follow-up to the technical working group, saying we  
9 looked at this, and it didn't really -- it wasn't the  
10 magic that we were hoping it was going to be.  
11 Q. Well, I wish you luck in finding the magic.  
12 The earlier recommendations that you and Kara  
13 made, that December 23rd document, it doesn't highlight  
14 this issue with the R-squared value.  
15 Is this something you discussed with the  
16 Director at all?  
17 A. Yeah.  
18 Q. Let me have you turn back to the comments that  
19 Sophia submitted. That's [Exhibit 15](#).  
20 A. Okay. I have it.  
21 Q. Okay. And on page 4 of that, if you'll flip  
22 to page 2 -- or, excuse me -- page 4.  
23 A. Okay. I'm on page 4.  
24 Q. Under Section 2, the second paragraph, I'll  
25 just read the first sentence, it says, "Lynker's

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1 technical memorandum included as addendum to IDWR staff  
2 recommendations in 2015 laid out an alternative forecast  
3 model approach that I continue to think should be  
4 further investigated."  
5 Are you familiar with the alternative forecast  
6 model approach that was laid out in Lynker's 2015 memo?  
7 A. No.  
8 Q. So you don't know whether the Department's  
9 evaluated that recommendation at all?  
10 A. As far as I know, we haven't evaluated that  
11 recommendation.  
12 Q. Okay. Thank you.  
13 I want to ask a few questions related to the  
14 acreage of Twin Falls Canal Company. And you'll recall  
15 that Ms. Klahn highlighted the disparity between the  
16 number of acres Twin Falls Canal Company reports as  
17 being irrigated and the number of acres the Department  
18 staff identified as being irrigated, somewhere around a  
19 little over 10,000 acres, I think.  
20 You mentioned during that dialog that you  
21 didn't feel like the Department's analysis satisfied the  
22 clear and convincing standard.  
23 Did I understand that answer correctly?  
24 A. Yes, that was my response.  
25 Q. What type of acreage examination would be

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1 required to -- you know, to satisfy the clear and  
2 convincing standard as you understand it?  
3 MR. BAXTER: I'm going to object. It calls  
4 for a legal conclusion by this witness.  
5 But, Matt, go ahead and answer the question to  
6 the extent you can.  
7 THE WITNESS: I think to start with, it would  
8 have to be -- ideally, if we could do it in-season, but  
9 that's awfully difficult to do because the irrigation  
10 season doesn't start until April, often, and we --  
11 that's when we're issuing our order and issuing the --  
12 so at least it would have to be within, I would say, you  
13 know, a year, and it would have to look at trying to  
14 take out things like hardened acres, try to capture, you  
15 know, what irrigation is taking place.  
16 Q. (BY MR. BUDGE) So I understood that  
17 Department staff, when they did their review, they were  
18 using satellite imagery and clipping out the  
19 nonirrigated acres?  
20 A. No. They -- well, there's three classes that  
21 they have. And you're correct in that they're using  
22 satellite imagery and aerial photography, and they may  
23 use other things, as well. They classify it into  
24 irrigated, nonirrigated, and semi-irrigated. The  
25 semi-irrigated is the one that, for lack of a better

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1 term, is kind of the catchall. It ends up being things  
2 like 10-acre farmsteads that have some irrigation but a  
3 house and buildings on it, so it's a mixture on that  
4 land. The nonirrigated is nonirrigated, and the  
5 irrigated is irrigated, but we have this other class  
6 within there.  
7 Q. And is that other class, then, that you think  
8 you would need some type of in-season inspection of to  
9 have confidence in that analysis?  
10 A. I'm not so -- I'm not so worried about -- or  
11 concerned about that one. I mean, farmsteads and new  
12 buildings don't change that much, but we don't have it  
13 split out in that data set. So we would need to get it  
14 split out.  
15 I think, for me, the making it more recent  
16 would be looking at the irrigated and nonirrigated  
17 portions, you know, are there new pivots, have they  
18 rearranged their fields, those types of things, have  
19 things gone into CRP or something like that, you know,  
20 that it's fallow for a year or two or something like  
21 that.  
22 Q. When was it that the Department did its  
23 analysis that came up with the, you know, 183,000-acres  
24 figure?  
25 A. The one that Sarah showed earlier today was

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1 from 2015, the 183. The 179 and the 180 was done more  
2 recently within the last couple of years. And it was --  
3 I did it just recently, and then -- with the 2017. I  
4 think for the METRIC, we were using the 2011. I think  
5 that's where the 179 came from.  
6 Q. Gotcha. Have you seen the report that IGWA's  
7 consultant did back during the delivery call in around  
8 '08, or something like that, where they came up with  
9 around 100 -- I think it was also around 183,000 acres?  
10 It was in the 180s.  
11 A. Is that the -- I'm wondering if that's the SPF  
12 column on that.  
13 Q. Yes. Yeah, Scott King, SPF.  
14 A. Yeah, I -- SPF participated in the 2015  
15 technical working group. And I remember discussing that  
16 report and talking to them. I think that's where I --  
17 how I knew about it. I have not read that report  
18 recently.  
19 Q. Okay. Was this information presented to the  
20 Director, you know, the Department's more recent  
21 analysis showing there was around 179- or 180,000 acres  
22 actually irrigated?  
23 A. We did discuss that with the Director, yes,  
24 the irrigated -- using the year, the 2017 irrigated  
25 lands, that's what we talked to him about.

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1 Q. Okay.  
2 A. Not the SPF data or the 2011.  
3 Q. So what would we need to do this irrigation  
4 season, you know, if IGWA or the groundwater users,  
5 collectively, if we're going to take this on and try to  
6 come up with a reliable analysis of how many acres are  
7 actually being irrigated, what do we need to do for you  
8 to have confidence in what we provide?  
9 MR. BAXTER: Objection; calls for speculation  
10 as to it's the Director who makes a decision here, and  
11 what the Director may accept is not something within the  
12 scope of Mr. Anders' knowledge.  
13 But, Matt, to the extent you understand the  
14 question, go ahead and answer the question.  
15 THE WITNESS: Could you repeat the question?  
16 MR. BUDGE: I can. And, Garrick, I would ask  
17 that your objections be one-word objections and not  
18 narrative.  
19 Q. (BY MR. BUDGE) The question is: If the  
20 groundwater users wanted to perform an analysis of  
21 actual irrigated acres in Twin Falls Canal Company, what  
22 would we need to do for you to have confidence in that  
23 analysis beyond what Department staff have already done?  
24 A. I think to have confidence in it, we would  
25 want to be able to review it. And we would end up

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1 comparing it to some kind of remote-sensing type of  
2 data, you know, aerial photography, to see what we --  
3 how accurate it is. Do we, you know, spot check? I  
4 don't know the standard that we would use. We've never  
5 considered analyzing someone else's irrigated lands.  
6 Q. Yeah. And this is why I'm asking -- it's not  
7 a gotcha question -- it's just a genuine trying to find  
8 out how do we get the best science available on this  
9 component of the methodology.  
10 And if the Department doesn't trust its own  
11 analysis, and they don't really want outsiders analyzing  
12 that, are we just stuck with decreed acres forever  
13 regardless of what's actually irrigated?  
14 MR. BAXTER: Objection. I think your  
15 narrative mischaracterizes the deponent's earlier  
16 testimony.  
17 But to the extent there was a question there,  
18 if there was one, feel free to answer the question.  
19 THE WITNESS: I think we trust our data set.  
20 I think our data set is out of date. It's not that I  
21 don't think it's a good data set. I don't think that  
22 it's a data set we could use to do clear -- to meet the  
23 clear and convincing evaluation.  
24 If we were to create a data set using the  
25 methods that we use, I -- you know, like right now -- I

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1 would trust that data set; that is a really good data  
2 set, the irrigated lands data sets. We -- those are  
3 hand-digitized, a lot of those. Those are people  
4 looking at fields. It doesn't -- there's a low -- I  
5 mean, those are reliable data sets; it's just out of  
6 date.  
7 Q. (BY MR. BUDGE) And that's what happened in  
8 2017?  
9 A. What do you mean? I'm sorry, I didn't  
10 understand the question.  
11 Q. Oh. So you said you've got confidence in this  
12 type of data set that you just described.  
13 A. Yes.  
14 Q. Is that what was done in 2017 by the  
15 Department?  
16 A. Used the irrigated lands data set?  
17 Q. Yes.  
18 A. We did not use the irrigated lands data set in  
19 2017. So when -- we had parallel processes going in  
20 developing METRIC, and this comes down to me. On one  
21 hand I was working on the Surface Water Coalition, and I  
22 was not using the irrigated lands data set to limit it  
23 to irrigated and semi-irrigated acres.  
24 But I developed this parallel process with  
25 METRIC where I was using irrigated lands data set to

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1 reduce the acres. I didn't realize that I had two  
2 different methods. And when I presented it to the  
3 technical working group, I think I presented it as that  
4 I was using the irrigated lands data set on -- for the  
5 methodology and realized -- I think it was you,  
6 possibly, who pointed out the acreage on my slide when I  
7 was presenting it.  
8 That was when I realized I had two different  
9 methods, unknowingly had two different methods going  
10 at -- you know, at the same time with METRIC. So we  
11 haven't been using the irrigated lands data set on the  
12 Surface Water Coalition shapefiles.  
13 Q. Yeah, so let me see if I'm following you; I  
14 might not be.  
15 A. Okay.  
16 Q. The last irrigated lands data set was created  
17 in 2017; is that right?  
18 A. Correct.  
19 Q. But that's not what you've been using in the  
20 methodology order since that time?  
21 A. Since the 2000 -- since the Fourth Methodology  
22 came out, I haven't been using an irrigated lands data  
23 set on the Surface Water Coalition shapefiles.  
24 Q. Gotcha. Have you or anyone else at the  
25 Department reached out to the Twin Falls Canal Company

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1 or any other member of the Coalition and said the acres  
2 you're reporting don't match up with the 2017 irrigated  
3 lands data set and ask them to explain the difference?  
4 A. We have not.  
5 Q. Do you have any reason to believe that the  
6 number they report is based upon a more robust analysis  
7 than what the Department has performed to date?  
8 A. I don't know the answer to that.  
9 Q. Is the Department making any effort to develop  
10 a contemporary irrigated lands data set so we can have  
11 an accurate number of irrigated acres for Twin Falls  
12 Canal Company or any other member of the Coalition?  
13 A. We are working on additional data sets since  
14 2017. I can't remember what year is going to be the  
15 most recent year, but we have additional ones that we're  
16 working on.  
17 Q. When do you expect that to be completed?  
18 A. I don't know. I'd have to find out.  
19 Q. Okay. Let me have you turn to the Fifth  
20 Methodology Order.  
21 MR. BAXTER: TJ, we're going on an hour and a  
22 half here.  
23 MR. BUDGE: Yep.  
24 MR. BAXTER: Matt, does it --  
25 THE WITNESS: I would like a break soon, but

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1 if you're in the middle of a question, we can continue  
2 until you get a natural break.  
3 MR. BUDGE: I've probably got another  
4 half-hour. So we can take a break here, and I'll  
5 organize my -- the remainder of my outline so we can  
6 expedite the remainder of my questions.  
7 THE WITNESS: Yeah, I think that would be  
8 good. A half-hour is probably too long, longer than I  
9 want to go. How's that?  
10 MR. BUDGE: It's 3:12. Do you want to shoot  
11 for 3:20? 3:25?  
12 THE WITNESS: 8:20 -- or, no, I said 8:20.  
13 3:20.  
14 MR. BUDGE: Okay. We'll see you then.  
15 Thanks, Matt.  
16 THE WITNESS: Thank you.  
17 (Break taken.)  
18 MR. BUDGE: Back on the record.  
19 Q. (BY MR. BUDGE) Hey, Matt, if you'll turn to  
20 the Fifth Methodology Order, that's Deposition  
21 Exhibit 2, and flip to page 10.  
22 A. Okay. I'm there.  
23 Q. And under paragraph 22, you'll see the table  
24 that shows the acres used in the methodology.  
25 A. Yes, I do.

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1 Q. I'm looking at Twin Falls Canal Company, and  
2 the table shows 194,732 acres.  
3 Do you see that?  
4 A. I do.  
5 Q. Am I understanding correctly that that's the  
6 number of acres Twin Falls reported to the Department?  
7 A. In their -- their shapefile was from 2013,  
8 then we do an analysis on it to -- or we did at that  
9 point, we don't do it every year. That might not have  
10 been the acres that their shapefile was. That was the  
11 acres after we made sure there were no overlaps or acres  
12 outside their service area that we had. So that might  
13 not have been what they told us, but that's what we came  
14 up with after our -- we do an analysis on all the  
15 shapefiles.  
16 Q. Okay. And tell me again what that analysis  
17 consists of.  
18 A. For most of them -- well, it's the same  
19 analysis for everybody. We make sure that there's no  
20 overlapping polygons in there and that -- so that acres  
21 wouldn't be double-counted and that no acres fall  
22 outside their service area in that shapefile.  
23 Q. Okay.  
24 A. For most of them we never do it. We only did  
25 it once, but Minidoka gives us a shapefile every year,

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1 so we do that every year for Minidoka.  
2 Q. Gotcha.  
3 A. Sorry to cut you off.  
4 Q. As part of that analysis, you don't go in and  
5 look at hardened acres and remove acres that are  
6 obviously not irrigated?  
7 A. No, we don't.  
8 Q. As part of the irrigation data set, the 2017,  
9 this last time it was done at the Department, as part of  
10 that analysis, the Department does go in and look at  
11 hardened acres and other land that's obviously not  
12 irrigated and cuts those out?  
13 A. Partially. It cuts out roads and, you know,  
14 things like the city of Twin Falls or Kimberly, those  
15 big things like that; but the semi-irrigated  
16 classification does have hardened acres in it. That's  
17 the one with the farmsteads and maybe the road up to the  
18 farmstead, so that's a mixture of that.  
19 I call it "farmstead," but it could be other  
20 things, you know, a park or something like that where  
21 there's a shelter or something. But there's usually  
22 some hardened acres. That's why we call it  
23 semi-irrigated; there's something going on in there  
24 that's not all irrigated.  
25 Q. Okay. So the three classifications in the

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1 irrigation data set, the one from 2017, you've got  
2 irrigated acres --  
3 A. Yep.  
4 Q. -- nonirrigated, and then semi-irrigated?  
5 A. Yep.  
6 Q. If you assume all of the semi-irrigated acres  
7 are fully irrigated and you just take out what's  
8 obviously not irrigated, do you know how many irrigated  
9 acres would have been shown in that 2017 data set?  
10 A. That's the 180,000. We take out -- the  
11 roughly 180,000 that you end up with. When we do that  
12 analysis, we take out the nonirrigated; what's left over  
13 is the irrigated and the semi-irrigated. So even in  
14 that number there is still some hardened acres that are  
15 represented by that semi-irrigated land.  
16 Q. Gotcha. So if you scrutinize the  
17 semi-irrigated lands, then the net number may be less  
18 than the 180,000?  
19 A. Likely less, yes. How much, I don't know.  
20 Q. Yeah, so explain again why the Department  
21 doesn't just at least use the 180,000 figure. Is it  
22 because you think maybe new land has been brought under  
23 irrigation since 2017?  
24 A. There have been changes since 2017 -- I'll  
25 give you an example. You know, when I was looking

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1 through it and kind of comparing what we get with the  
2 2021 aerial photography, I found a location where in  
3 2017 it was individual fields that looked like maybe  
4 they were wheel lines or something like that; but by the  
5 time we got to 2021 -- so it was clipped out into -- all  
6 these areas were clipped out of it as nonirrigated.  
7 But when we get to 2021, a pivot had been  
8 replaced in there, so areas that were -- we called  
9 "nonirrigated" using the -- doing the 17 irrigated lands  
10 data set, were now irrigated under that pivot. So they  
11 had reorganized their fields, taken out roads. So there  
12 were irrigated things that we had taken out of that data  
13 set with it because it was out of date.  
14 Q. Gotcha. So there's -- you're saying there's  
15 probably some land that in 2017 was shown as  
16 nonirrigated that may currently be irrigated?  
17 A. And vice versa. I guess there's both, yes.  
18 Q. Yeah, given the level of urbanization that's  
19 occurred within the Twin Falls Canal Company service  
20 area, wouldn't you expect, on the whole, that more land  
21 would be taken out of irrigation since 2017 than brought  
22 under irrigation?  
23 MR. BAXTER: Objection; calls for speculation.  
24 MR. SIMPSON: Objection.  
25 MR. BAXTER: Go ahead and answer the question,

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1 though. Sorry.  
2 THE WITNESS: I don't know. I don't -- I've  
3 never seen anything that indicates that's true or false.  
4 I just have no data or anything to rely on.  
5 Q. (BY MR. BUDGE) Do you have any data that  
6 would indicate to you that the number of acres shown on  
7 page 10 of the Fifth Methodology Order -- and we can  
8 look at Twin Falls again -- have you received any  
9 information that would tell you that the 194,732-acre  
10 figure is a more reliable representation of actual  
11 irrigated acres than what is found in the 2017 data set?  
12 A. I don't have anything that says it's more  
13 reliable.  
14 Q. Do you know if that 2017 data set is utilized  
15 by Jennifer Sukow in her modeling activities?  
16 A. I do not know if she uses that.  
17 Q. Let me have you turn -- in fact, Dylan, I'm  
18 going to have you hand Matt a new exhibit. It's the  
19 technical working group presentation labeled, "Use of  
20 the Near Real Time METRIC. Presented by Ethan Geisler,  
21 Kara Ferguson, & Matt Anders," dated December 1st.  
22 ([Exhibit 17](#) marked.)  
23 Q. (BY MR. BUDGE) Matt, has that exhibit been  
24 provided to you?  
25 A. Yes, it has. Thank you.

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1 Q. Do you recognize that document?  
2 A. I do.  
3 Q. And please identify it.  
4 A. The title is "Proposed Modification to Method  
5 for Determining Reasonable in-Season Demand for the  
6 Surface Water Coalition: Use of Near Real Time METRIC.  
7 Presented by Ethan Geisler, Kara Ferguson, & Matt  
8 Anders," dated December 1st, 2022.  
9 I believe this is the presentation that Ethan  
10 presented to the technical working group.  
11 Q. Were you present at that meeting where he made  
12 that presentation?  
13 A. Yes, I was.  
14 Q. And are you familiar with the data he  
15 presented?  
16 A. I am, yes.  
17 Q. You can turn to the very last page of that,  
18 and, hopefully, you still have open page 10 of the Fifth  
19 Methodology Order, because I want to look at those side  
20 by side.  
21 A. I don't, but I can get it open.  
22 Q. If you would, that would be great.  
23 A. And you're comparing to a similar table on  
24 page 10, where it talks about "Shapefile Acres,"  
25 "Partial Decree Acres"; is that correct?

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1 Q. Yep.  
2 A. Okay.  
3 Q. And I'll draw your attention to the line for  
4 A&B Irrigation District. It looks to me that in the  
5 methodology order and in the presentation, the same  
6 acreage figure is used, 15,924?  
7 A. I think you're -- I think that's correct.  
8 They match.  
9 Q. In the presentation at the bottom, there's an  
10 asterisk that says, "A&B acres include" the following,  
11 and the first bullet point says, "1 to 14,  
12 14,637 acres."  
13 Do you know what the "1 to 14" refers to?  
14 A. That's water right 1-14, I believe.  
15 Q. Okay. And then there's a list of beneficial  
16 use claims.  
17 Are you familiar with those?  
18 MR. BAXTER: TJ, hold up real quick. I'm just  
19 trying to find -- what page are you on?  
20 THE WITNESS: We're on page 22.  
21 MR. FLETCHER: The last page.  
22 THE WITNESS: Yours isn't marked. I think you  
23 have a different version.  
24 MR. FLETCHER: It's on the very last page.  
25 MR. BUDGE: Garrick, there's two versions of

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1 this presentation. There's one that had supplemental  
2 slides.  
3 MR. BAXTER: Okay.  
4 MR. BUDGE: You need the version with the  
5 supplemental slides.  
6 MR. BAXTER: There we go. All right. Thank  
7 you, TJ. I appreciate that. I'm good to go now.  
8 Q. (BY MR. BUDGE) The second bullet is  
9 "Beneficial use claims."  
10 Are you familiar with those water rights?  
11 A. Somewhat.  
12 Q. Are those decreed water rights?  
13 A. I believe they are.  
14 Q. Okay. And then there's an enlargement  
15 right -- two enlargement rights totaling 1175.2 acres.  
16 Do you see that?  
17 A. Oh, I'm sorry, yes.  
18 Q. Do you know what the priority dates are on the  
19 beneficial use claim of water rights?  
20 A. I don't.  
21 Q. What about the enlargement rights?  
22 A. I don't.  
23 Q. Okay. For purposes of calculating irrigation  
24 season demand for A&B, the Department is using the  
25 beneficial use claims or including the beneficial use



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1 claims and the enlargement rights; is that right?  
2 A. Yes, that is correct.  
3 Q. Has there been any discussion among Department  
4 staff as to whether it's appropriate to include those  
5 water rights?  
6 A. I have not been part of any discussions about  
7 that.  
8 Q. Let me switch gears. I'm done with those  
9 exhibits for the time being. And I'll have you pull up  
10 [Exhibit No. 15](#), which are the comments that Sophia  
11 submitted in January of this year.  
12 A. Yep, I have them.  
13 Q. If you'll turn to page 6. Actually, you can  
14 turn to page 5 to begin with, just to see the section  
15 heading. We're in Section 4, which is labeled, "Project  
16 Efficiency"; do you see that?  
17 A. I do.  
18 Q. And then the next page, page 6, there's some  
19 comments that Sophia makes about project efficiency  
20 among SWC entities. And this is a subject that  
21 Ms. Klahn asked you questions about, and there was some  
22 discussion about surface water efficiencies either being  
23 flat or becoming slightly less sufficient in recent  
24 years.  
25 Do you remember that conversation?

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1 A. I do remember that, yep.  
2 Q. I just have a few follow-up questions.  
3 A. Okay.  
4 Q. Had the Department ever investigated potential  
5 system efficiencies or improvements available to the  
6 Surface Water Coalition?  
7 A. Not that I'm aware of.  
8 Q. There's been no studies of their systems and  
9 what improvements might be available to help them become  
10 more efficient?  
11 A. Not that I know of, no.  
12 MR. BUDGE: Okay. Let me have marked as an  
13 exhibit the conjunctive management rules.  
14 MR. BAXTER: Did you provide those to Dylan?  
15 MR. BUDGE: I did.  
16 MR. FLETCHER: What is it?  
17 MR. BAXTER: Conjunctive management rules.  
18 ([Exhibit 18](#) marked.)  
19 Q. (BY MR. BUDGE) Thanks, Matt. If you'll turn  
20 to page 3 of those rules.  
21 A. Okay. I'm on page 3.  
22 Q. I'm, initially, just going to ask whether  
23 you're familiar with some of these rules. If you look  
24 at the page 3, there's a Section 10 which has several  
25 definitions.

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1 A. I see.  
2 Q. And if you'll look at 10.07, there's a  
3 definition of "Full Economic Development of Underground  
4 Water Resources." I'm going to ask you to just read  
5 that to yourself, and let me know if you're familiar  
6 with this concept of "Full Economic Development of  
7 Underground Water Resources."  
8 A. Okay, I read it.  
9 Q. Are you familiar with this rule or at least  
10 the concept?  
11 A. I'm mildly familiar with the concept.  
12 Q. Okay. And then if you'll look at the next  
13 definition, it's "Futile Call." If you'll read that and  
14 let me know if you're familiar with that concept.  
15 A. Okay. I'm done reading.  
16 Q. Are you familiar with the futile call concept?  
17 A. I am familiar with that concept.  
18 Q. Okay. If you'll turn to page 5.  
19 A. I'm on page 5.  
20 Q. We're in Section 20 which has statements of  
21 purpose and policies for the conjunctive management of  
22 surface and groundwater resources. And I'll ask you to  
23 read subsection 20.03, which is titled, "Reasonable Use  
24 of Surface and Ground Water."  
25 Read that again, and let me know if you're

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1 familiar with the concept described in that rule.  
2 A. I have finished reading it.  
3 Q. Are you familiar with the concepts of  
4 reasonable use, optimum development of water resources,  
5 and full economic development described in that  
6 paragraph?  
7 A. Somewhat familiar.  
8 Q. And then the last sentence I'll read: "An  
9 appropriator is not entitled to command the entirety of  
10 large volumes of water in a surface or ground water  
11 source to support his appropriation contrary to the  
12 public policy of reasonable use of water as described in  
13 this rule."  
14 Are you familiar with this concept as well?  
15 A. Yep, I am. Yes, I am. Sorry.  
16 Q. Were concepts of reasonable use, futile call,  
17 or full economic development ever brought up during your  
18 work on the Fifth Methodology Order?  
19 MR. BAXTER: TJ, I'm going to object to the  
20 question.  
21 At our April 28th status conference, the  
22 Director stated that this is an evidentiary hearing,  
23 that he is making employees available to testify  
24 regarding evidentiary facts and the data in which the  
25 methodology order relies upon. He made it clear, and

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1 identified both Matt Anders and Jennifer Sukow as  
2 witnesses in which he is going -- he's identifying to  
3 testify as to these particular issues. Questions about  
4 reasonableness, futile call are legal questions and  
5 outside the scope in which the Director has identified  
6 these witnesses to testify to.  
7 And so I'm going to instruct the witness not  
8 to answer the question.  
9 MR. BUDGE: Okay, Garrick, just to clarify,  
10 I'm not asking the witness about legal conclusions. I'm  
11 asking the witness what information he may have supplied  
12 to the Director related to these topics.  
13 MR. BAXTER: Matt, go ahead and answer the  
14 question.  
15 THE WITNESS: This is a legal topic. It's  
16 outside of my expertise. I didn't provide any input to  
17 the Director on these topics.  
18 Q. (BY MR. BUDGE) Did you or anyone else at the  
19 Department calculate the total number of water rights  
20 that would be curtailed under a December 30th, 1953,  
21 curtailment date in the absence of mitigation plans?  
22 A. That -- yes, I -- that was not by me, but  
23 somebody has that number at the Department, yes.  
24 Q. Do you know who that would be?  
25 A. It would be done out of the water distribution

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1 group. Normally, I think that once Jennifer identifies  
2 a priority date, it goes to Brian Ragan, and he starts  
3 compiling a list of what rights are going to be  
4 curtailed, and he would -- and I think the first portion  
5 of that is he knows how many water rights that is.  
6 Q. Okay. That's not something that you're able  
7 to testify about?  
8 A. His process?  
9 Q. Yeah, just the total number of water rights  
10 curtailed under the current curtailment date in the  
11 absence of mitigation plans.  
12 A. I don't have that number, no.  
13 Q. Did you or anyone else at the Department  
14 calculate the total diversion rate in cfs that would be  
15 curtailed under a December 30th, 1953, curtailment date  
16 in the absence of mitigation plans?  
17 A. Repeat that question, please.  
18 Q. Did you or anyone else at the Department  
19 calculate the total diversion rate in cfs under water  
20 rights that would be curtailed under a 1953 curtailment  
21 date in the absence of mitigation plans?  
22 A. I would refer that question to Jennifer Sukow.  
23 Q. Okay. Do you know if you or anyone else  
24 calculated the total volume that would be curtailed in  
25 the absence of mitigation plans? So I'm talking

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1 acre-feet.  
2 A. Can you repeat that question, please?  
3 Q. Yeah. Did you or anyone else at the  
4 Department calculate the total volume in acre-feet of  
5 water that would be curtailed under a December 30th,  
6 1953, curtailment date in the absence of mitigation  
7 plans?  
8 A. That's the shortfall that we calculated in  
9 April.  
10 Q. Not the shortfall to the Coalition. I'm  
11 asking about the total volume under groundwater rights  
12 that would be curtailed.  
13 A. That number that we put in the As-Applied is  
14 not just for IGWA, that's everybody. That's the  
15 shortfall, that's how much needs to be curtailed.  
16 Q. Yeah, and so what I'm asking is the As-Applied  
17 Order has a demand shortfall of 75,200 acre-feet; and  
18 then to supply that 75,200 acre-feet, it orders the  
19 curtailment of all groundwater rights junior to  
20 December 30th, 1953.  
21 What I am asking is: Do you know what the  
22 authorized diversion volume is under all of those  
23 curtailed groundwater rights?  
24 A. I don't know. I would refer that to Jennifer  
25 Sukow. She might know that, I'm not sure.

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1 Q. Do you know if anyone at the Department has  
2 done any analysis relating to the magnitude of the  
3 beneficial use of water that would be curtailed under  
4 December 30th, 1953, curtailment date in the absence of  
5 mitigation plans?  
6 A. Not that I know of.  
7 Q. Did you or anyone else at the Department  
8 attempt to quantify the projected or potential crop loss  
9 or other impairment to beneficial use of water within  
10 Twin Falls Canal Company that would result from a demand  
11 shortfall of 75,200 acre-feet?  
12 A. Not that I know of.  
13 Q. Are you aware that the Department has utilized  
14 trim lines in prior delivery calls?  
15 A. That is outside my expertise.  
16 Q. Have you heard that term used before in the  
17 Department?  
18 A. I've heard the term "trim line," yes.  
19 Q. What's your understanding of what a trim line  
20 does?  
21 A. My answer to that would not -- what's the best  
22 way -- it might even be as bad as a guess. I don't have  
23 a -- I don't have a good understanding of how we use it,  
24 so when you ask me, I don't -- it would be worse, yeah,  
25 than a guess, probably.

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1 Q. Did that term ever come up during your work in  
2 regard to the Fifth Methodology Order?  
3 A. Not in my portion of the methodology, the work  
4 that we do.  
5 Q. Okay. If the Director asked you to apply the  
6 Fourth Methodology Order in the 2023 irrigation season,  
7 could you have done that?  
8 A. Yes.  
9 Q. Are you aware of any emergency that required  
10 use of the Fifth Methodology Order instead of the Fourth  
11 Methodology Order in the 2023 irrigation season?  
12 A. I don't know of an emergency.  
13 Q. Okay.  
14 MR. BUDGE: That's all the questions I've got,  
15 Matt. As was mentioned earlier, we're going to keep  
16 your deposition open, which means we may call you back  
17 at a future date. That all depends on additional  
18 information that's gathered in this case. We've not  
19 completed discovery or technical work on our side, so I  
20 appreciate the time you've given us today. It's been a  
21 lot of time, and you've done a nice job, so thank you  
22 for being here. And, hopefully, we don't need to call  
23 you back, but there's a chance.  
24 THE WITNESS: You're welcome. Thank you.  
25 MR. BAXTER: Who's up next?

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1 MR. JOHNS: I think that would be me.  
2 MR. BAXTER: All right. Skyler is moving to  
3 the hot seat.  
4 EXAMINATION  
5 QUESTIONS BY MR. JOHNS:  
6 Q. All right. Matt, admittedly, I'm not a  
7 technical expert, and so some of these questions are  
8 just going to be things that I reviewed with some  
9 technical consultants, and they had just a couple of  
10 questions. I think more just by way of clarification to  
11 try and better understand why certain things were done.  
12 A. Okay.  
13 Q. Just for the record, my name is Skyler Johns.  
14 I represent the Bonneville-Jefferson Ground Water  
15 District, and so I'm here representing them.  
16 I believe that we've already admitted the  
17 Fifth Methodology Order, and that's Exhibit -- is it  
18 Exhibit 2, Garrick, that we had?  
19 MR. BAXTER: Yes.  
20 Q. (BY MR. JOHNS) If you wouldn't mind grabbing  
21 that. And then we have not, I don't believe, admitted  
22 the Fourth Amended Methodology Order, so I'm going to go  
23 ahead and give copies to you guys here.  
24 MR. BUDGE: Hey, Skyler?  
25 MR. JOHNS: Yes.

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1 MR. BUDGE: Skyler, this is TJ.  
2 MR. JOHNS: Yeah.  
3 MR. BUDGE: It's difficult to hear what you're  
4 saying. I don't know if you could get closer to the  
5 microphone. And then the Fourth Methodology Order is  
6 Deposition Exhibit 5.  
7 MR. JOHNS: Oh, okay. So we did get it in  
8 there.  
9 MR. BAXTER: Sorry, Skyler.  
10 MR. JOHNS: No, that's okay.  
11 MR. SIMPSON: Actually, Exhibit 5 is these.  
12 MR. FLETCHER: Yeah, that was frequently asked  
13 questions.  
14 MR. SIMPSON: Right.  
15 MR. FLETCHER: TJ, that was frequently asked  
16 questions, Exhibit 5.  
17 MR. JOHNS: We don't have it.  
18 MR. FLETCHER: I don't remember...  
19 MR. BUDGE: Okay. My mistake. I must have  
20 marked the wrong document yesterday.  
21 MR. JOHNS: Well, then, I guess we'll just be  
22 thorough, and we'll just get it in.  
23 TJ, can you hear me a little better?  
24 MR. BUDGE: That's great, thank you.  
25 MR. JOHNS: Yeah, I'll try to use my

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1 projection voice.  
2 (Exhibit 19 marked.)  
3 Q. (BY MR. JOHNS) Matt, can you read the caption  
4 of what I just placed in front of you?  
5 A. "Docket No. CM-DC-2010-001, Fourth Amended  
6 Final Order Regarding Methodology for Determining  
7 Material Injury to Reasonable In-Season Demand and  
8 Reasonable Carryover."  
9 Q. Are you familiar with this document?  
10 A. I am.  
11 Q. Did you perform work -- and you may have  
12 answered this question already -- but did you perform  
13 any work in this document?  
14 A. I did.  
15 Q. Okay. If you wouldn't mind pulling up the  
16 Fifth Amended Methodology Order and then just having it  
17 side by side. I just want to do some quick  
18 comparisons --  
19 A. Okay.  
20 Q. -- and then just ask a few questions about a  
21 couple of changes that --  
22 A. Sure.  
23 Q. -- or at least I'll represent things that we  
24 saw were changes that were made between the Fourth and  
25 the Fifth.

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1 So can you please turn, in the Fifth Amended  
2 Final Order, to page 24.  
3 A. Okay.  
4 Q. And then on the Fourth, can you, please, turn  
5 to page 24.  
6 A. Okay. I have them both open and side by side.  
7 Q. Okay. Are you familiar with the tables and  
8 the information that are presented in the Fourth and the  
9 Fifth Methodology Orders on pages 24 for both?  
10 A. Yeah, I am familiar, yes.  
11 Q. Did you perform work on the Fourth Methodology  
12 Order table that's in there?  
13 A. I don't think that I created this version in  
14 the Fourth Methodology.  
15 Q. Did you review this information in your --  
16 A. Yes. Yep.  
17 Q. -- in preparation for the Fifth?  
18 A. Yep.  
19 Q. Okay. I just want to ask a couple of  
20 questions between the Fourth and the Fifth with regard  
21 to the two -- well, let's start with the 2007. So if  
22 you wouldn't mind going to 2007. Let me pull my notes  
23 here. And comparing the information between Minidoka in  
24 the Fourth Methodology Order and Minidoka in the Fifth  
25 Methodology Order -- actually, I want to start on 1999

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1 not 2007.  
2 A. Okay.  
3 Q. Do you notice any differences in the  
4 information between the two documents?  
5 A. I do. Milner --  
6 MR. SIMPSON: What pages again?  
7 MR. JOHNS: Sorry. It's pages 24 on the Fifth  
8 and page 24 on the Fourth.  
9 MR. SIMPSON: Okay.  
10 MR. JOHNS: And we're just looking at 1999 and  
11 the information for Minidoka.  
12 And sorry, Matt, I --  
13 THE WITNESS: No, no, we're fine.  
14 Q. (BY MR. JOHNS) Could you state whether or not  
15 there's a difference between the information?  
16 A. There is. In Milner in the Fourth Methodology  
17 Order is 96, in the Fifth it's 100, North Side is 98 in  
18 the Fourth and 100 in the Fifth, and Twin Falls Canal  
19 Company is 99 in the Fourth -- oh, jeez, I was on the  
20 wrong line. Let me go back.  
21 Q. No, it's okay. No, let's focus on --  
22 A. You guys should have cut me off.  
23 Q. Here, I was going to actually --  
24 A. I was totally on the wrong line.  
25 Q. Why don't I -- I'm going to hand you a

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1 highlighter.  
2 A. Okay.  
3 Q. And would you mind, on 1999, looking  
4 specifically at the information, the values that were  
5 provided for Minidoka.  
6 A. I'm sorry. So 1999, Fourth Methodology,  
7 Minidoka?  
8 Q. Yep.  
9 A. Okay, yep.  
10 Q. And then will you look at Minidoka's  
11 information for the Fifth?  
12 MR. BAXTER: Skyler, did you want him to  
13 highlight?  
14 Q. (BY MR. JOHNS) Yes, could you please  
15 highlight the information. I apologize.  
16 A. All right. And Minidoka 1995 on the Fifth?  
17 Q. '99.  
18 A. '99, I'm sorry.  
19 Q. That's okay.  
20 A. '99, yep, okay. Oh, that's much better.  
21 Q. Okay. Is there a difference between those two  
22 values?  
23 A. Yes, in 19 -- in the Fourth Methodology Order  
24 it's 100 percent, and in the Fifth it's 98 percent.  
25 Q. Okay. Do you know why those values are

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1 different between the two orders?  
2 A. When we -- the spreadsheets that we use we  
3 went back and relooked at how we're calculating some of  
4 that. There had been some updates in the data and a  
5 little different interpretation on our part about how  
6 the fill -- we use data from Water District 1 when we do  
7 that, about whether it filled or not.  
8 Q. So was there new information obtained between  
9 the Fourth Methodology Order and the Fifth Methodology  
10 Order with regard to past years, then?  
11 A. At some point there was different data or a  
12 different interpretation on our part, one of the two.  
13 Q. And has that data been provided?  
14 A. Yes. That's in the -- this is in -- these  
15 data and this table are in the spreadsheet. I don't  
16 have the name, but it's in the -- I'm guessing it's the  
17 one that came out -- that's on our web page -- that came  
18 out, I think you said, on the 5th. Is that right? It's  
19 the one that Sarah gave the zip out on our webpage. I'm  
20 guessing that's what it's in.  
21 Q. Okay.  
22 A. And it would be in "Reasonable Carryover"  
23 folder.  
24 Q. Thank you for that clarification. Would that  
25 be the same with any other differing values between the

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1 Fourth and the Fifth?  
2 A. Yes. I haven't checked, but my guess is  
3 there's a few changes here and there because of the way  
4 we did that, yes.  
5 Do you want your highlighter back.  
6 Q. Yeah. Thanks. And I haven't had a chance to  
7 review that, so this deposition is being left open, so  
8 if I have any additional questions, I might come back  
9 and ask you about those after I've reviewed that data.  
10 A. Sure.  
11 Q. Okay, the next portion we have, would you mind  
12 turning, on the Fifth Amended Order, to page 26.  
13 A. Okay.  
14 Q. And then on the Fourth, I believe it's on  
15 page 25.  
16 A. I have both of those on that page.  
17 Q. And this is under Section C, "Average annual  
18 carryover for the Fourth Amended and for the Fifth"; is  
19 that correct?  
20 A. Yes, that's what I see.  
21 Q. Okay. And you're familiar with these tables,  
22 as well, for the Fourth and the Fifth?  
23 A. Yes, I am.  
24 Q. How many categories was the table divided into  
25 for the Fourth?

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1 A. We divided it into four, based on the  
2 unregulated flow at Heise, very dry, dry, average, and  
3 then I guess we didn't have a title in there, but it was  
4 greater than 45 -- 4.5 million acre-feet.  
5 Q. And under very dry -- and this says it's  
6 represented in thousands of acre-feet, it has a value of  
7 less than 3,000; is that the threshold measure for  
8 everything?  
9 A. So, yes, what that number represents, for  
10 example, on very dry, less than 3 million acre-feet of  
11 unregulated flow at the Heise Gage.  
12 Q. Did that number change in the Fifth  
13 Methodology Order, that measurement?  
14 A. The categories changed, if that's what you're  
15 asking.  
16 Q. How so?  
17 A. We looked at the categories that we used in  
18 the Fourth Amended Methodology -- and, actually, I think  
19 they came out in the Third, so they were in the Third  
20 and the Fourth -- and it refers to very dry. The  
21 conjunctive management rules only refer to dry. So we  
22 revised that, and we -- while we still kept the  
23 unregulated flow at Heise, we did not break it based on  
24 dry and very dry or the flow at Heise. We just broke it  
25 on the average. So below average is considered dry,

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1 above average is wet. We just have two categories.  
2 Q. Was it you who made that recommendation that  
3 it be taken from four categories down to two categories?  
4 A. Kara and I discussed it, and we agreed that it  
5 should be broken into two categories.  
6 Q. On the Fifth Methodology Order there's a  
7 footnote there, it's footnote 20. Would you mind  
8 reading that? And I believe it goes from page 26 over  
9 to page 27. Would you mind reading that?  
10 A. Okay. "In the Fourth Methodology Order, this  
11 table summarized data for the period 1994 to 2014 and  
12 adjusted Water District 01 carryover values to remove  
13 water received for mitigation or water rented by the  
14 Surface Water Coalition entity to augment their  
15 supplies. This Fifth Methodology Order updates this  
16 chart with data for the period of 1992 to 2001 and uses  
17 raw carryover values reported by Water District 01. Raw  
18 numbers were used because adjusted numbers reduced the  
19 Surface Water Coalition's potential entitlement to  
20 reasonable carryover."  
21 Q. So is it correct to say that there was a shift  
22 in how you were using the data between the Fourth and  
23 the Fifth Amended Methodology Order?  
24 A. That is correct, yes.  
25 Q. And it's explained in footnote 20?

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1 A. That is correct.  
2 Q. Was that a recommendation that you made to the  
3 Director?  
4 A. Yes, that is a recommendation that I made.  
5 Q. Okay. And it was accepted?  
6 A. It's in the order, so he agreed with it.  
7 Q. Okay. I was just curious if that was  
8 consistent with your recommendations.  
9 I had a follow-up question on the definition  
10 of "dry years." In the past Fourth Methodology Order it  
11 was less than 3 million acre-feet.  
12 Was that the same case in the Fifth  
13 Methodology Order, or did it increase?  
14 A. Your question was is the dry -- are you  
15 referring to the very dry?  
16 Q. Oh, sorry.  
17 A. Okay.  
18 Q. Is the definition of "dry" in the Fifth  
19 Methodology Order the same as or measured from the same  
20 threshold as it was measured in the Fourth?  
21 A. I don't quite understand the question.  
22 Q. Maybe this will help clarify what I'm  
23 thinking.  
24 Could you go to page 27 of the Fifth Amended  
25 Final Order.

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1 A. Okay. Sure. 27? Oh, on the Fifth? I'm  
2 sorry.  
3 Q. Yeah, sorry. On the Fifth. Maybe this will  
4 help what I'm just trying to clarify.  
5 A. I'm there. Okay.  
6 Q. So under Section 2 it says -- under Section D  
7 sub ii, just above paragraph 73, it says, "AFRD2"?  
8 A. Yep.  
9 Q. Does that stand for American Falls Reservoir  
10 District No. 2?  
11 A. It does.  
12 Q. Paragraph 73, could you review that quickly  
13 for me. It goes from page 27 over to page 28.  
14 A. Okay. I have read that paragraph.  
15 Q. So the question I'm getting at is in that  
16 paragraph it references 3,100 K acre-feet; correct?  
17 A. It does.  
18 Q. Is that saying that's the threshold measure?  
19 A. Yes, it does.  
20 Q. Okay. And that's increased from the Fourth  
21 Methodology Order where it was very dry years?  
22 A. I don't understand the increased portion of  
23 that. That 3,100 is -- 3,100,000 is the unregulated  
24 flow at Heise.  
25 Q. Oh, okay. So that's not setting a threshold

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1 measure from --  
2 A. We're using that as a threshold measure to say  
3 AFRD2 space filled all the time when the flow at Heise  
4 was above that threshold. It -- that number is not  
5 setting the dry very dry; it's just the threshold at  
6 which AFRD2 no longer -- or every year had a fill for  
7 their space.  
8 Q. And I apologize, I'm trying to answer. I got  
9 some technical inquiries, and I'm trying to translate  
10 them. So I apologize if it's a little messy.  
11 I think TJ had asked that question. Okay.  
12 TJ Budge had asked you whether you disagreed with any  
13 findings that were made in the Fifth Methodology Order,  
14 and I believe your answer was "no"; is that correct?  
15 A. [Witness nods head.]  
16 Q. Can you identify any findings in the Fifth  
17 Methodology Order that differ from the technical  
18 information that you provided to the Director or  
19 recommendations that you made?  
20 MR. BAXTER: Matt, I'm going to object to the  
21 question. To the extent that your answer to the  
22 question would require you to disclose information  
23 regarding the Director's deliberative process on legal  
24 or policy issues, you're instructed not to answer the  
25 question. But if you can find a circumstance to answer

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1 that without getting to the Director's deliberative  
2 process and how it leads to conclusions, you're free to  
3 answer the question.  
4 THE WITNESS: Could you repeat that question?  
5 Q. (BY MR. JOHNS) Yes. Can you identify any of  
6 the Director's findings in the Fifth Amended Methodology  
7 Order that differ from the technical information you  
8 provided him or the recommendations you made to the  
9 Director?  
10 A. I don't have an instance where we made a  
11 recommendation and he, without discussing it with us,  
12 changed a number or something like that.  
13 Q. So just to clarify, you -- are you saying that  
14 he consulted -- you had made recommendations to him, and  
15 if he made any change in the Fifth Methodology Order  
16 from what your recommendations were, there was a  
17 discussion that took place about that?  
18 A. No. Now that you repeated that back, I don't  
19 like that answer, if that's what I said.  
20 Q. No. No. And I just want to be clear on --  
21 A. I don't know of an instance where we provided  
22 a recommendation that he changed, but it's not out of  
23 the question. That's his prerogative as the person who  
24 signs the order to do that if he wants, but I don't have  
25 an example of that.

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1 Q. Okay. So to your knowledge, as you sit there  
2 today, the recommendations you made were adopted?  
3 A. We make a lot of recommendations to the  
4 Director, and then we discuss them with him. That  
5 question is very hard for me to answer because I don't  
6 know if everything that we talked about was exactly the  
7 way we presented it to him. My guess is in many cases  
8 it wasn't, it got modified in some way. I'll leave it  
9 at that.  
10 Q. Okay. I don't think I have any more on that.  
11 Just another follow-up question. Again, this is going  
12 back to something TJ had asked you.  
13 A. Okay.  
14 Q. Do you recall the conversation you had with TJ  
15 about whether there were any deadlines set for the -- I  
16 believe it was the 2023 irrigation season for the Fifth  
17 Methodology Order to be in place?  
18 A. Okay. Not exactly, but okay.  
19 Q. Yeah, my recollection was you said there were  
20 some -- there were some deadlines, but then there were  
21 other factors, like you didn't have the ability to  
22 perform analysis on certain subject areas.  
23 MR. BAXTER: I'm going to object to the  
24 characterization of the witness's earlier testimony.  
25 It's not quite how I remember it. But again, continue

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1 on.  
2 Q. (BY MR. JOHNS) Maybe I'll just reask the  
3 similar line of questioning that I think TJ was asking,  
4 maybe that will be easiest rather than trying to  
5 recharacterize what TJ had asked.  
6 Were you ever instructed to have a Fifth  
7 Methodology Order prepared for the Director to review  
8 before the 2023 irrigation season commenced?  
9 A. That was the goal that the Director gave us,  
10 was to try to have it out before the irrigation season.  
11 Q. And did he give you that goal before  
12 August 2022 or after?  
13 A. I think at that point that was the inferred --  
14 or the preferred -- his preferred time frame was to get  
15 it out by April for the irrigation for the 2023  
16 irrigation season. I don't remember him saying, that's  
17 it, it has to be out. I don't think there was any  
18 directive like that.  
19 Q. Was that before August 2022 or after?  
20 A. I don't think that came until where we --  
21 after we got the comments from the technical working  
22 group and then had looked through those where it became  
23 more of a, okay, we're going to try to modify this thing  
24 and have it out for the irrigation season. I think back  
25 in August it was more of a, let 's look through this.

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1 But the idea generally would be if we're going to make  
2 changes, it's going to be for the 2023 season, but there  
3 was no, like, we're for sure going to do this in August.  
4 Q. Okay. So it was after the technical working  
5 group presentations?  
6 A. Yeah, I think that's when we started seeing  
7 okay, what we want to do.  
8 Q. Would you have liked more time to put it  
9 together?  
10 A. I always want more time.  
11 Q. Why?  
12 A. It's a complicated methodology. We spent time  
13 trying to look through the different methods that we're  
14 using and procedures. We worry over the details, and we  
15 always want to do more, try to investigate more. So,  
16 yeah, we always want more time to work on it and get it  
17 as good as we can.  
18 Q. As a scientist, do you feel like this was the  
19 best work you could have done on the methodology, in  
20 your scientific opinion?  
21 A. I think in the time frame and with the data  
22 that we have, I think we've used, in most cases -- or in  
23 all cases, the best science that we have available and  
24 time and kind of all the factors and staff that we have.  
25 This is the best product we can get with this.

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1 Q. Other than the items you had previously  
2 stated, is there anything else you would have liked more  
3 time to be able to work through and prepare for the  
4 Director other than things you've previously stated?  
5 A. I don't have anything additional, no.  
6 Q. This is a couple questions I have about the  
7 technical working group meetings.  
8 A. Okay. Yep.  
9 Q. Who was in charge of organizing and scheduling  
10 the technical working group meetings?  
11 A. I scheduled and organized the meetings.  
12 Q. Okay. Who was invited to attend those?  
13 A. So when we started getting it together, I  
14 inquired with the Director about who we should invite.  
15 Q. Did the Director have final input on the  
16 invitation list?  
17 A. His response was ask the parties who they want  
18 to attend the technical working group. I never -- I  
19 think I gave him the list, but he never, like, said, you  
20 know, you can't invite this or you can invite that  
21 person. Just it was more of a, here's what we came up  
22 with after contacting the parties.  
23 Q. Was anyone invited to attend, or was it a  
24 by-invitation-only process?  
25 A. I would characterize it as by invitation

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1 only.  
2 Q. Do you know why that is?  
3 A. I don't know what all the Director was  
4 considering when he said, ask the parties.  
5 Q. So is it fair to say that no public comments  
6 were sought on the technical working group?  
7 A. I think that's accurate.  
8 Q. Do you know whether any of the technical  
9 working group materials were posted online prior to the  
10 April 21st orders being -- or April 21st, 2023, orders  
11 being issued?  
12 A. I don't think any of the technical working  
13 group -- I think there was a question earlier today  
14 about whether we posted it. I don't think it's on our  
15 web page. We distributed it, but I don't think we put  
16 it on our web page.  
17 Q. Okay. Yeah. And I think I said Sarah said  
18 something about she couldn't find materials from a  
19 Google search, so --  
20 A. That sounds like -- I don't remember it being  
21 out there. So I don't think it is.  
22 MR. JOHNS: Let me just do a quick scan to  
23 make sure.  
24 I think you answered everything I have.  
25 Thanks, Matt.

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1 THE WITNESS: Thank you.  
2 MR. BAXTER: Dylan.  
3 MR. ANDERSON: I've got, like, one question.  
4 MR. BAXTER: Dylan said he has, like, one  
5 question. We're holding him to it.  
6 MR. ANDERSON: "Like" one question, depending  
7 on the answer.  
8 MR. BAXTER: One question with ten subparts.  
9 MR. ANDERSON: Yeah. It's 15 questions in  
10 one.  
11 EXAMINATION  
12 QUESTIONS BY MR. ANDERSON:  
13 Q. Well, let me preface this with I understand  
14 the standing objection that you cannot -- been  
15 instructed not to talk about the Director's deliberative  
16 legal process.  
17 So with that in mind, and understanding the  
18 objections there, my question is: As you talked about  
19 discussions you had with the Director, did that result  
20 in any modification or changes to the technical data  
21 calculations that you had done and presented to the  
22 Director?  
23 A. Communication with the Director, did that  
24 result in changes to the analyses and what we did?  
25 Q. Yes.

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1 A. Often, we would talk with him and communicate  
2 with him, present the data to him, he would give his  
3 input, we may go back and do additional analysis or look  
4 at it a different way, and then report that back to him  
5 again. It is an iterative process with a lot of these  
6 topics.  
7 Q. Can you provide examples of when and how that  
8 happened?  
9 MR. BAXTER: I'm going to object. I've been  
10 pretty generous in allowing the exploration of  
11 information building up to that, but I think this is  
12 last question goes to specifics that this is -- goes  
13 directly to the Director's deliberative process. So I'm  
14 going to instruct the witness not to answer that  
15 question.  
16 MR. ANDERSON: And can I ask a question just  
17 in follow-up to that? So is it your -- when the data is  
18 first presented to the Director, is that data process  
19 over, and then once the Director gives input on that  
20 data, any future changes to that data is now a part of  
21 the deliberative process? Is that the position?  
22 MR. BAXTER: Oh, are you asking me?  
23 MR. ANDERSON: Yeah, I'm asking you.  
24 MR. BAXTER: I'm sorry, Dylan, can you  
25 restate?

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1 MR. ANDERSON: I just want to understand  
2 the -- because, you know, the deliberative process, if  
3 he calculates and does a workup on some formula that has  
4 the data input, presents it to the Director and, as he  
5 stated, subject to their conversation that might get  
6 changed, once he comes back and starts changing it, it's  
7 no longer part of the deliberative process; or is it  
8 your view that after he presents that data the first  
9 time, any subsequent changes to that data is part of the  
10 deliberative process?  
11 MR. BAXTER: You asked a question asking for  
12 specific examples of the process in which the  
13 back-and-forth goes, and I don't think it's appropriate  
14 for -- given the limitation the Director has put on  
15 here, to talk about, you know, details with regards  
16 to -- and, again, I've been, you know, not objecting to  
17 a lot of the questions today, to let you have an insight  
18 into, you know, how this works; but now you're asking  
19 about specifics, and that's my concern here.  
20 MR. ANDERSON: Maybe I can revise the  
21 question.  
22 Q. (BY MR. ANDERSON) So I'm not asking about  
23 specifics related to any discussions with the Director,  
24 but can you give a specific example of data you worked  
25 on and then reworked after talking to the Director?

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1 MR. BAXTER: Again, I think that's, you know,  
2 if he gives you an example, it's talking about the  
3 details of -- you know, your next question is going to  
4 be, well, why did he ask -- you know, why did you have  
5 this back-and-forth on this specific data, and so --  
6 MR. ANDERSON: It probably would be.  
7 MR. BAXTER: -- I just -- that's a step too  
8 far from my opinion. So, again, I'm going to instruct  
9 the witness not to answer the question.  
10 MR. ANDERSON: Okay. I don't think I have any  
11 further questions. Thank you.  
12 THE WITNESS: Thank you.  
13 MR. ANDERSON: Sorry I mumbled that.  
14 COURT REPORTER: No, that's okay.  
15 MS. McHUGH: This is Candice. I have some  
16 questions.  
17 EXAMINATION  
18 QUESTIONS BY MS. McHUGH:  
19 Q. Hi, Matt. Candice McHugh on behalf of the  
20 Coalition of Cities. My understanding is that you are  
21 Jennifer's supervisor; is that true?  
22 A. Indirectly. Three months ago I became her  
23 supervisor. I'm not -- Sean Vincent is her direct  
24 supervisor. I am Sean's supervisor as of about three  
25 months ago, early March.



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1 Q. Okay, fair enough. What did you instruct  
2 Jennifer to do relative to the Fifth Methodology Order?  
3 A. I did not give Jennifer any direct instruction  
4 for the order.  
5 Q. Who, to your knowledge, instructed Jennifer to  
6 run the ESPAM model in the transient mode to determine  
7 the curtailment date?  
8 MR. BAXTER: I'm going to object. I think  
9 it's -- well --  
10 MS. McHUGH: I believe Jennifer said in her  
11 deposition that Matt instructed her, so that's why I'm  
12 asking.  
13 Q. (BY MS. McHUGH) If you didn't instruct  
14 Jennifer to run the model in a transient mode in order  
15 to determine priority date, who would have?  
16 A. My guess is that would have come through her  
17 direct supervisor, Sean Vincent.  
18 Q. Is it your testimony that you did not instruct  
19 Jennifer to run the model in a transient mode?  
20 A. I did not directly -- yes, that is my  
21 testimony.  
22 Q. Did you instruct anybody to instruct Jennifer  
23 to run the model in transient mode?  
24 A. No. There's a transition that happened here.  
25 Jennifer and I were both reporting to Sean when the

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1 process started, when we started doing this review and  
2 the process. So that came before I was in my current  
3 role. So it's a little bit difficult for me to say I  
4 instructed her because it had already started, the  
5 process had already started before I got into my current  
6 role.  
7 Q. So is it your testimony that you don't know  
8 who instructed Jennifer to run the model in the  
9 transient mode to determine the priority date?  
10 A. My testimony is I assume it was Sean, but I  
11 don't know. I was not there when she was instructed.  
12 Q. When did the determination get made to change  
13 from a steady-state model -- you said the model to the  
14 transient use of the model is reflected in the Fifth  
15 Methodology Order?  
16 A. The official change came when the Director  
17 signed the order.  
18 Q. Prior to April 21st, when did the  
19 determination get made to use the model in a transient  
20 mode to determine the priority date?  
21 MR. BAXTER: I'm going to object to the  
22 question.  
23 Matt, to the extent your answer to the  
24 question would require you to disclose information  
25 regarding the Director's deliberative process on policy

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1 issues, such as change from transient to -- or to change  
2 from steady state to transient, you're instructed not to  
3 answer that question.  
4 Q. (BY MS. McHUGH) Are you thinking?  
5 A. Yeah, I'm thinking.  
6 Q. Okay.  
7 A. I think that came sometime after the comments  
8 from the technical working group, in between when it was  
9 signed.  
10 Q. So the comments to the technical working  
11 group, they were -- let me back up.  
12 There was a memo that was discussed, and I  
13 think it was exhibit -- is it Exhibit 4? It's the  
14 technical working group memo dated December 23rd, 2022?  
15 MS. KLAHN: I think that's right, Candice.  
16 THE WITNESS: Okay. I do remember that memo,  
17 yes, it was from Kara and I.  
18 Q. (BY MS. McHUGH) Yeah. So sometime between  
19 that memo and April 21st, when the Director signed the  
20 order, was when the decision was made to use the ESPAM  
21 model in a transient mode to determine the curtailment  
22 date; is that what you're saying?  
23 A. I think that I said that it was after the  
24 technical working group comments were received.  
25 Q. Okay. And do you know approximately when

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1 those technical working group comments were received?  
2 A. I think they were due around January 16th.  
3 Q. Okay. So sometime between January or after  
4 January 16th and April 21st the decision to use the  
5 transient mode for the ESPAM model was made?  
6 A. I think. I think that's approximately the  
7 time frame.  
8 Q. And was the determination to use the transient  
9 mode for the ESPAM model, is that a policy decision?  
10 A. I think that's a legal and a technical  
11 question, together, and a policy. I lump policy and  
12 legal together. Maybe not the best plan, but I do.  
13 Q. So who made the technical determination to use  
14 the model of the transient mode to determine curtailment  
15 date?  
16 MR. BAXTER: I'm going to object to the  
17 question.  
18 Once again, Matt, to the extent your answer to  
19 the question requires you to disclose information  
20 regarding the Director's deliberative process on a  
21 decision, policy decision -- well, I guess you  
22 characterized it as both legal and policy decision --  
23 relating to change to this, you are instructed not to  
24 answer the question.  
25 THE WITNESS: I think that question could be

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1 better answered by Jennifer Sukow.  
2 Q. (BY MS. McHUGH) Do you know who made the  
3 decision to move to the transient mode?  
4 A. The Director made the decision.  
5 Q. Was that decision made in a meeting?  
6 MR. BAXTER: Again, to the extent your answer  
7 to the question would require you to disclose  
8 information relating to the Director's deliberative  
9 process, you're instructed not to answer the question.  
10 THE WITNESS: I don't know the answer to that  
11 question.  
12 Q. (BY MS. McHUGH) Were you in any meetings  
13 where the decision was discussed -- where the use of the  
14 model in the transient mode was discussed?  
15 A. Yes.  
16 Q. And was Mat Weaver in that meeting?  
17 MR. BAXTER: Again, I'm going to object to the  
18 question.  
19 To the extent it would require you to disclose  
20 information regarding the Director's deliberative  
21 process -- and that includes who was helping advising  
22 the Director -- Mr. Anders, you are instructed not to  
23 answer the question. And so if something you were  
24 thinking of would be responsive to it and disclose that  
25 deliberative process, you are not to answer that

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1 question.  
2 THE WITNESS: Okay. That goes into the  
3 deliberative process of the Director; that's my opinion.  
4 Q. (BY MS. McHUGH) Okay. Was Jennifer Sukow in  
5 that meeting?  
6 MR. BAXTER: Again, the same objection.  
7 THE WITNESS: I don't know on that. I don't  
8 know all the meetings Jennifer was in.  
9 Q. (BY MS. McHUGH) Were you in that meeting?  
10 MR. BAXTER: Objection. Once again, a list of  
11 who was participating, Candice, in the Director's  
12 deliberative process is included in that coverage. I'm  
13 instructing the witness not to answer the question.  
14 It's time to move on from seeking lists of everybody who  
15 was participating. Thank you.  
16 MS. McHUGH: And I am just making a record,  
17 Garrick. I understand you're going to object.  
18 Q. (BY MS. McHUGH) Was Shelley Keen in the  
19 meeting?  
20 MR. BAXTER: Objection.  
21 I'm going to instruct the witness to not  
22 answer the question on the grounds I previously stated.  
23 Q. (BY MS. McHUGH) Was Brian Patton in the  
24 meeting?  
25 MR. BAXTER: Objection.

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1 I'm going to instruct you not to answer the  
2 question on the grounds previously stated.  
3 Q. (BY MS. McHUGH) Moving on from whether there  
4 was a meeting or not that, apparently, may or may not  
5 have occurred, separate from any such meeting where the  
6 Director was involved, was there -- were you in any  
7 discussions with any other Department staff, excluding  
8 the Director, on changing the recommendation to go from  
9 using the model in a steady-state mode to a transient  
10 mode?  
11 MR. BAXTER: I'm going to instruct the witness  
12 not to answer the question.  
13 As we discussed, I think it was on Wednesday,  
14 Candice, participation of employees and their  
15 discussions of information leading up to what they  
16 recommended the Director, we believe is covered under  
17 the deliberative discussion issue identified here and is  
18 excluded from the scope of this deposition. So I'm  
19 going to instruct the witness not to answer the  
20 question.  
21 MS. McHUGH: Can the witness disclose whether  
22 or not a meeting occurred and not who's in the meeting?  
23 MR. BAXTER: Once again, I'm going to instruct  
24 the witness not to answer that question. Who's in  
25 meetings implies whether or not there was meetings.

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1 Again, that's going to the whole Director's deliberative  
2 process.  
3 MS. McHUGH: So if I understand your  
4 objection, Garrick, you're saying that we can't find out  
5 if there was a meeting among staff members that excluded  
6 the Director on whether to recommend a change from using  
7 the ESPAM model from a steady-state to a transient mode?  
8 We can't know if there was a meeting of staff,  
9 excluding the Director?  
10 MR. BAXTER: Correct.  
11 Q. (BY MS. McHUGH) Who made the decision to  
12 accept Twin Falls Canal Company's report of the acres  
13 that they irrigate?  
14 A. The Director.  
15 Q. And is that a policy decision?  
16 A. That's a difficult question for me. I --  
17 could you repeat the question?  
18 Q. The question was, who decided to accept Twin  
19 Falls Canal Company's report of their acres, and you  
20 said, "The Director."  
21 My follow-up question that you were  
22 considering is, "is that a policy decision?"  
23 A. I think it is based on a technical analysis.  
24 Q. Is it also a decision based on the fact that  
25 the Director believes the Department doesn't have time

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1 or the resources to analyze those acres outside of  
2 accepting what Twin Falls Canal Company provides the  
3 Department?  
4 A. I can't speak for what the Director is  
5 thinking there.  
6 Q. Have you ever been told that part of the  
7 reason that you don't scrutinize the amount of acres  
8 that Twin Falls Canal Company claims to be irrigating is  
9 because it's a resource issue?  
10 A. No, I don't remember that ever happening.  
11 MR. BAXTER: Matt, I'm going to ask you to  
12 raise your voice, too.  
13 THE WITNESS: I'm sorry. I do not remember  
14 being instructed, as you stated.  
15 Q. (BY MS. McHUGH) Maybe I misunderstood your  
16 testimony earlier. I thought one of the reasons that  
17 the Department accepts Twin Falls Canal Company's  
18 reporting of their acres is that if you were to analyze  
19 them, in your opinion, in order to analyze what's  
20 actually been irrigated, it would take you, like, a year  
21 or some period of time in order to ground truth the  
22 number of acres irrigated under Twin Falls Canal  
23 Company's system with its surface water rights and  
24 storage water rights?  
25 A. Yeah, I think that's what I said. That sounds

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1 accurate.  
2 Q. Okay. And so, I guess, what I was going  
3 towards is one of the reasons you accept what Twin Falls  
4 Canal Company provides the Department is because the  
5 Department has limited resources, personnel, time, to do  
6 anything else?  
7 A. I think that that's also accurate.  
8 Q. Okay. Whose decision was it to not change the  
9 way the forecast supply is utilized in the Fifth  
10 Methodology Order?  
11 A. The Director's decision. Sorry, that wasn't  
12 very loud. The Director's decision.  
13 Q. So it was the Director who decided that you  
14 wouldn't include other inputs from, like, the Portneuf  
15 River Basin or from other supplies that go into the  
16 Snake River and to rely exclusively on the Heise Gage?  
17 A. Our recommendation to him was to wait and see  
18 what happens to the regressions, you know, the R-squared  
19 portions of those regressions. He, ultimately, decided  
20 to not update and sign the order with the old -- or not  
21 old, but the current, to carry over the regressions from  
22 the Fourth Methodology Order.  
23 Q. And was that a policy decision?  
24 A. I think so, yes.  
25 Q. You had mentioned, and I don't exactly know

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1 when, but you mentioned in response to somebody's  
2 question that Brian Ragan is the person at the  
3 Department who compiles, I think, the list of water  
4 rights that would be curtailed under the Fifth  
5 Methodology Order; is that correct?  
6 A. Yeah, that is what I stated.  
7 Q. Okay. And do you know who instructs Brian  
8 Ragan to do that?  
9 A. I think -- I assume it's his supervisor.  
10 Q. And who is that?  
11 A. Rob Whitney.  
12 Q. And do you know if there was any discussions  
13 within the Department about the timing of when that list  
14 of curtailed water rights would be sent out to those  
15 people that were not part of mitigation plans?  
16 A. Could you restate the question, please.  
17 Q. Sure. It was probably a poor question. Let  
18 me give you a little bit of context.  
19 So do you understand that the order came out  
20 on April 21st, the Fifth Amended Methodology Order came  
21 out on April 21st?  
22 A. Yes.  
23 Q. And as a part of that order it had a  
24 curtailment date of December 31st of 1953, would be the  
25 date that anybody junior to that date would be

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1 curtailed.  
2 Do you understand that?  
3 A. Yes.  
4 Q. And do you also understand that that means  
5 that there's water right holders out there that are  
6 junior to December 31st, 1953, who are at risk for  
7 curtailment this season if they are not part of a  
8 mitigation plan?  
9 A. Yes.  
10 Q. And my question is: Was there any discussion  
11 within the Department as to the timing of when those  
12 people, the people that are not part of the mitigation  
13 plan but junior to 1953, would receive notice that  
14 they're at risk for curtailment this season?  
15 A. I hate to do this, but could you repeat the  
16 question, just the last part, not the whole  
17 step-through.  
18 Q. Fair enough. Are you aware that they -- that  
19 the people who are not covered by mitigation plans did  
20 not receive notice of the Fifth Methodology Order?  
21 A. I was not aware of that.  
22 Q. Are you aware -- did -- are you aware if there  
23 was any discussions within the Department on when notice  
24 would be provided to the people who are at risk for  
25 curtailment this season would be provided notice?

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1 A. I am unaware because that is outside the  
2 normal function that I do for the methodology. That's  
3 done by the other group.  
4 Q. And who is the other group?  
5 A. I'm sorry. Brian Ragan, it's done by the  
6 group that he's in.  
7 Q. Would you agree it would be important for  
8 people to know that they're going to be curtailed this  
9 season, to know that they're going to be curtailed this  
10 season prior to the hearing in this matter?  
11 MR. BAXTER: Objection. I think it calls for  
12 a legal conclusion.  
13 Q. (BY MS. McHUGH) You can answer.  
14 A. I think we would want to give them as much  
15 notice as we could.  
16 Q. Do you know when the notice has gone out to  
17 those people?  
18 A. No, I don't normally know.  
19 Q. Okay. Who would know that beside Brian Ragan?  
20 Would Tim Luke know that?  
21 A. I would assume that he would know that, but  
22 I'm not for sure.  
23 Q. Okay.  
24 A. Am I talking loud enough? Too much? I feel  
25 like I'm --

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1 Q. You're doing fine.  
2 A. I feel like I'm getting quieter as we talk.  
3 MR. FLETCHER: Candice, can we go off the  
4 record just a second?  
5 MS. McHUGH: Just bear with me for a moment.  
6 MR. FLETCHER: Can we go off the record a  
7 second, Candice?  
8 MS. McHUGH: Sure.  
9 (Discussion held off the record.)  
10 MS. McHUGH: Thanks, Matt. I have no further  
11 questions.  
12 THE WITNESS: You're welcome. Thank you.  
13 MS. McHUGH: Well, and I will just say, as  
14 with everybody else, I haven't had a chance to review  
15 all the information that was provided today, so because  
16 your deposition is left open, I may, too, have some  
17 follow-up questions later.  
18 THE WITNESS: Okay.  
19 MS. McHUGH: Thank you.  
20 THE WITNESS: Thank you.  
21 MR. ANDERSON: I didn't say that, but I assume  
22 it's the same.  
23 MR. BAXTER: Yes.  
24 You guys?  
25 MR. FLETCHER: I don't have any questions.


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1 MR. SIMPSON: No questions.  
2 MR. BAXTER: I do have -- it works out to two  
3 questions for you, Mr. Anders.  
4 EXAMINATION  
5 QUESTIONS BY MR. BAXTER:  
6 Q. So you might recall Mr. Budge asked you some  
7 questions related to your work on the Methodology Order  
8 in 2021?  
9 Do you recall those questions?  
10 A. I do.  
11 Q. How would you characterize the work that you  
12 did at that time in 2021?  
13 A. I would characterize it as a check-in, as a  
14 time where we looked at the methodology to try to  
15 evaluate if it needed to be updated.  
16 MR. BAXTER: Okay. Thank you. That's  
17 actually my only questions.  
18 All right. It looks like we are done for the  
19 day.  
20 MS. KLAHN: Do we want to set a -- hi,  
21 Garrick, this is Sarah. We can go off the record. I  
22 want to ask about the next scheduling.  
23  
24 (Deposition adjourned at 4:51 p.m.)  
25 (Signature requested.)

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1 CERTIFICATE OF WITNESS  
2 I, MATTHEW ANDERS, P.G., being first duly sworn,  
3 depose and say:  
4 That I am the witness named in the foregoing  
5 deposition, Volume I, consisting of pages 1 through 220;  
6 that I have read said deposition and know the contents  
7 thereof; that the questions contained therein were  
8 propounded to me; and that the answers contained therein  
9 are true and correct, except for any changes that I may  
10 have listed on the Change Sheet attached hereto.  
11 DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
12  
13 \_\_\_\_\_  
14 MATTHEW ANDERS, P.G.  
15 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of  
16 \_\_\_\_\_, 20\_\_.  
17  
18  
19 \_\_\_\_\_  
20 NAME OF NOTARY PUBLIC  
21  
22 NOTARY PUBLIC FOR \_\_\_\_\_  
23 RESIDING AT \_\_\_\_\_  
24 MY COMMISSION EXPIRES \_\_\_\_\_  
25

1 CHANGE SHEET FOR MATTHEW ANDERS, P.G.  
2 Page \_\_\_ Line \_\_\_ Reason for Change \_\_\_\_\_  
3 Reads \_\_\_\_\_  
4 Should Read \_\_\_\_\_  
5  
6 Page \_\_\_ Line \_\_\_ Reason for Change \_\_\_\_\_  
7 Reads \_\_\_\_\_  
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19 Reads \_\_\_\_\_  
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22 Page \_\_\_ Line \_\_\_ Reason for Change \_\_\_\_\_  
23 Reads \_\_\_\_\_  
24 Should Read \_\_\_\_\_  
25 Use a separate sheet if you need more room.  
26 WITNESS SIGNATURE \_\_\_\_\_

1 REPORTER'S CERTIFICATE  
2 I, ANDREA L. CHECK, CSR No. 748, Certified  
3 Shorthand Reporter, certify;  
4 That the foregoing proceedings were taken  
5 before me at the time and place therein set forth, at  
6 which time the witness was put under oath by me;  
7 That the testimony and all objections made  
8 were recorded stenographically by me and transcribed by  
9 me or under my direction;  
10 That the foregoing is a true and correct  
11 record of all testimony given, to the best of my  
12 ability;  
13 I further certify that I am not a relative or  
14 employee of any attorney or party, nor am I financially  
15 interested in the action.  
16 IN WITNESS WHEREOF, I set my hand and seal  
17 this 15th day of May, 2023.  
18  
19   
20 \_\_\_\_\_  
21 ANDREA L. CHECK, CSR No. 748, RPR, CRR  
22 Notary Public  
23 P.O. Box 2636  
24 Boise, Idaho 83701-2636  
25 My Commission expires July 20, 2028.

	55:25;97:4;180:1,4,17,18; 181:11;191:4,6,10;193:11; 194:16	<b>adjusting (1)</b> 37:7	<b>agreeing (1)</b> 76:3
@		<b>adjustments (1)</b> 139:25	<b>agreement (4)</b> 117:7,10,13;154:24
@idwridahogov (1) 92:22	<b>Acres (99)</b> 30:22;39:12;43:12;47:6; 83:23;90:22;91:1;93:14,20,22, 24;94:11,21;95:6;96:3,8,11,21; 97:8,8;98:7,12;100:20,22,22, 23;102:4,6,16,20;103:6,9,11; 104:6;105:2,3,6,10,13,23,25; 106:4,10,24;107:6,17,20,22; 108:6;109:6,13,19;110:2,2; 111:2;156:16,17,19;157:14,19; 159:9,21;160:6,21;161:12; 162:23;163:1;164:1,11;165:24; 166:2,6,10,11,11,20,21;167:5,5, 11,16,22;168:2,6,9,14;170:6, 11;171:24,25;172:10,12; 173:15;213:12,19;214:1,7,18, 22	<b>administer (3)</b> 94:21;95:6;107:20	<b>AgriMet (1)</b> 38:5
[		<b>administering (1)</b> 96:3	<b>ahead (20)</b> 41:25;67:15;68:11;72:3; 74:20;93:5;95:11,14;107:14; 108:1,19;133:22;148:5;153:18, 19;157:5;160:14;169:25; 178:13;183:23
[Witness (1) 195:15		<b>administration (9)</b> 32:23;33:3,10,11,13,16; 36:10;101:13,16	<b>aid (1)</b> 11:7
A		<b>Administrative (1)</b> 119:3	<b>air (1)</b> 106:23
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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 ) DOCKET NO.  
IRRIGATION DISTRICT, AMERICAN ) CM-DC-2010-001  
FALLS RESERVOIR DISTRICT #2, )  
BURLEY IRRIGATION DISTRICT, )  
MILNER IRRIGATION DISTRICT, )  
MINIDOKA IRRIGATION DISTRICT, )  
NORTH SIDE CANAL COMPANY, AND )  
TWIN FALLS CANAL COMPANY )  
\_\_\_\_\_ )

DEPOSITION OF JENNIFER SUKOW, P.E., P.G.

May 10, 2023

REPORTED BY:

COLLEEN P. DOHERTY, CSR 345

Notary Public

Page 2

1 THE DEPOSITION OF JENNIFER SUKOW, P.E., P.G.  
 2 was taken on behalf of the Various Water Users, at the  
 3 offices of the IDWR, located at 322 E. Front Street, 6th  
 4 Floor, Boise, Idaho, commencing at 8:00 a.m., on May 10,  
 5 2023, before Colleen P. Doherty, Certified Shorthand  
 6 Reporter and Notary Public within and for the State of  
 7 Idaho, in the above-entitled matter.  
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 16 Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield,  
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 23 ALSO PRESENT: Alan Jackson  
 24 (Present Remotely) Sophia Sigstedt, Thane Kindred,  
 25 Jaxon Higgs, Bryce Contor, Erick Powell

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1 JENNIFER SUKOW, P.E., P.G.,  
 2 having been called as a witness and duly sworn to tell  
 3 the truth relating to said cause, testified as follows:  
 4 MR. BAXTER: Candice, before we get started, I  
 5 just want to lay a little foundation here today. You  
 6 might recall that on May 5th, 2023, the Director entered  
 7 an order limiting the scope of the depositions in this  
 8 particular matter. And he said he was limiting the  
 9 scope of the deposition to preclude questions regarding  
 10 the Director's deliberative process on legal and policy  
 11 considerations.  
 12 Now, as the Director discussed at our recent  
 13 status conference, he relied upon staff to help with  
 14 technical matters. So the Director has made staff  
 15 available to answer questions related to technical  
 16 matters. But please be aware that if counsel starts  
 17 asking questions about the Director's deliberative  
 18 process on legal and policy matters, I may instruct the  
 19 witness not to answer the question.  
 20 Also, with regards to the documents that have  
 21 been requested, the Director has identified and asked  
 22 staff to identify the documents that they have relied  
 23 upon in analyzing and assisting the Director on creating  
 24 the methodology order those documents have been  
 25 identified and posted on IDWR's website. And I believe

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1 it looks like we might have copies of some of those  
 2 today here that you anticipate answering questions with  
 3 regards to. So those are the documents that Ms. Sukow  
 4 is providing with regards to answering the requests in  
 5 your subpoena for documents. And those are the only  
 6 documents we're providing at this point in time.  
 7 So I just wanted to lay that foundation,  
 8 Candice, before we started.  
 9 MS. McHUGH: And that's fine, Garrick. But  
 10 I'm going to go through each one and have the deponent  
 11 answer those questions. You can feel free to object.  
 12 But I think we have the right to ask the question. She  
 13 can answer that she is not providing any documents for  
 14 whatever reason. But, you know, I'm going to ask the  
 15 questions I'm going to ask. If you feel like you have  
 16 to object, because somehow it goes outside the scope,  
 17 then that's what you are going to have to do. But I am  
 18 not limiting my questions. Because I don't know that I  
 19 understand that instruction entirely. And I don't know  
 20 that I understand what is in and outside the scope. But  
 21 I do understand, and I can read the order for myself,  
 22 and understand that the Director has limited it.  
 23 I would like to understand when you make the  
 24 objection, what your basis is for instructing her not to  
 25 answer the question.

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1 MR. BAXTER: I will lay that foundation.  
 2 MS. McHUGH: But maybe we can do that on a  
 3 question by question basis. And that will end up  
 4 prolonging the depo. But I mean, I guess that's all I  
 5 can do at this point.  
 6 MR. BUDGE: Hey, Candice, can I ask a  
 7 clarifying question for Garrick?  
 8 MS. McHUGH: Yes.  
 9 MR. BUDGE: Garrick, this is TJ. The order  
 10 that the Director issued just pertains to evidence at  
 11 the hearing. It doesn't impose a protective order on  
 12 discovery that would prevent us from asking questions in  
 13 discovery. And as you know, depositions are much  
 14 broader in terms of what you can inquire into.  
 15 And so are you taking the position, Garrick,  
 16 that we can't even in a deposition, ask any questions  
 17 that you believe might go outside the bounds of what's  
 18 admissible at the hearing?  
 19 MR. BAXTER: Well, TJ, let me read the  
 20 Director's order. It says, "It is further ordered that  
 21 the scope of any deposition of a Department employee  
 22 will preclude questions regarding the Director's  
 23 deliberative process on legal and policy  
 24 considerations." And so I think that clearly applies to  
 25 this circumstance.

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1 MS. McHUGH: And, Garrick, is the Director and  
2 the Department asserting some sort of privilege?  
3 MR. BAXTER: Candice, as the order outlines  
4 the Director's legal authority to do this, and it speaks  
5 for itself.  
6 MS. McHUGH: I'm asking if you are asserting  
7 some sort of privilege. I understand that Rule 521 is  
8 cited. I'm asking if the Director and the Department is  
9 also asserting any kind of privilege?  
10 MR. BAXTER: Again, Candice, the order speaks  
11 for itself.  
12 MS. McHUGH: So the Director is not asserting  
13 any sort of privilege?  
14 MR. BAXTER: Candice, I'm not under  
15 questioning here today.  
16 MS. McHUGH: Okay. I was just trying to  
17 clarify, Garrick, I mean.  
18 MR. BAXTER: And I answered your question  
19 twice, Candice.  
20 MR. BUDGE: Hey, Garrick, this is TJ. Just  
21 another point of clarification. I'm looking at a notice  
22 of materials the Department witnesses may rely upon at  
23 the hearing, and intent to take official notice. I  
24 think you are referring to it in a different order; is  
25 that right?

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1 MR. BAXTER: Yes, it's the May 5th, 2023,  
2 order denying appointment of an independent hearing  
3 officer, and motion for continuance, and limiting the  
4 scope of depositions.  
5 MR. BUDGE: Okay. I'll review that. And then  
6 if I have further questions about that order, I can ask  
7 you later. But I do think Candice's point is an  
8 important one. Well, let me review that order and then  
9 I can ask any questions later on.  
10 ([Exhibit 1](#) marked.)  
11 EXAMINATION  
12 QUESTIONS BY MS. McHUGH:  
13 Q. All right. Ms. Sukow, I think there is a  
14 document that is the Notice of the Deposition Duces  
15 Tecum, and I think it's been marked as Deposition  
16 [Exhibit 1](#). I understand Garrick's objections. The  
17 questions that I'm going to ask you today relative to  
18 the documents right now, are just whether or not those  
19 documents have been provided. I understand they are all  
20 uploaded on the Department's website.  
21 But this isn't your first deposition. I think  
22 you understand the process. If I have asked a question  
23 that's not clear to you, feel free to stop and tell me I  
24 didn't make any sense or whatever. Your attorney gets  
25 to make objections, which I think you understand. Just

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1 by way of introduction, I think it would be helpful for  
2 the record, so everybody understands who is here today.  
3 I'm Candice McHugh. You and I know each  
4 other. I represent the Coalition of the Cities. I'm  
5 going to go ahead and let everyone else introduce  
6 themselves, so I think you know everybody that's in the  
7 room or maybe not. And then we will introduce who is on  
8 the Zoom call. And then we will go forward with  
9 questioning starting with [Exhibit 1](#).  
10 So again, can the people in the room just for  
11 the record, identify themselves.  
12 MR. BAXTER: This is Garrick Baxter, attorney  
13 for the Department of Water Resources.  
14 MR. JOHNS: Skyler Johns attorney for  
15 Bonneville-Jefferson Ground Water District.  
16 MR. JACKSON: Alan Jackson for Bingham Water  
17 District.  
18 MR. ANDERSON: Dylan Anderson, attorney for  
19 Bingham Ground Water District.  
20 MR. FLETCHER: Kent Fletcher, attorney for  
21 Minidoka Irrigation District and American Falls  
22 Reservoir District No. 2.  
23 MR. SIMPSON: Good morning. John Simpson,  
24 attorney for the Surface Water Coalition, including the  
25 Twin Falls Canal Company, North Side Canal Company, and

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1 Milner Irrigation District, A & B, Burley Irrigation  
2 District.  
3 MS. McHUGH: Is that everybody in the room?  
4 MR. BAXTER: That's everybody in the room.  
5 MS. McHUGH: Okay. Just so people in the room  
6 understand, I can see only Jennifer. I can't see  
7 anybody else. So if it is frustrating to you that I  
8 don't know that, that's the reason.  
9 For those of us that are on the Zoom call, you  
10 want to just introduce yourself, starting with TJ.  
11 MR. BUDGE: Yes, this is TJ Budge, attorney  
12 for the Idaho Ground Water Appropriators. I have with  
13 me Eleisheva Patterson, also an attorney for IGWA.  
14 MR. BROMLEY: This is Chris Bromley, attorney  
15 for Coalition of Cities. I might not be on the  
16 deposition the entire time.  
17 MS. SIGSTEDT-LYNKER: Sophia Sigstedt, I'm a  
18 technical consultant for IGWA.  
19 MR. KINDRED: This is Thane Kindred, technical  
20 consultant for Bonneville-Jefferson.  
21 MR. CONTOR: And Bryce Contor also for  
22 Bonneville-Jefferson.  
23 MR. HIGGS: Jaxon Higgs with IGWA.  
24 MS. McHUGH: I believe Sarah Klahn is also  
25 listening in as time allows her to, for the City of

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1 Pocatello, but she might not be on right at this moment.  
2 Q. (BY MS. McHUGH) Okay. So, Jennifer, you have  
3 in front of you what's been marked as Deposition Exhibit  
4 1. It is the Notice of Deposition Duces Tecum. Have  
5 you seen this document before?  
6 A. No.  
7 Q. Okay. So today's your first time of seeing  
8 this Notice and the request that are contained therein?  
9 A. That's correct.  
10 Q. Okay. If you could turn to page 4, in this  
11 Notice, we had asked that you produce the following  
12 documents for deposition. And I understand from  
13 Garrick's comments that the documents that we have been  
14 told, the Director said you can rely on, and that we can  
15 look on are uploaded. And I just want to go through  
16 each one of these requests and see if any of these  
17 documents are part of those to your knowledge.  
18 Request No. 1, "Any and all documents  
19 reflecting your involvement in the issuance of the Fifth  
20 Amended Methodology Order." To your knowledge are all  
21 those documents uploaded?  
22 A. Yes.  
23 Q. Does that include emails between you and the  
24 Department, and other Department staff?  
25 A. No.

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1 Q. So not all documents reflecting your  
2 involvement are uploaded to the Department's website?  
3 A. Not if you are talking about all emails, no.  
4 Q. Okay. Are there any other documents or  
5 memorandum that you have among you and Department staff  
6 that show your involvement in the issuance of the Fifth  
7 Methodology Order that are not uploaded?  
8 A. All the technical work that I did for the  
9 Fifth Methodology Order are uploaded. So all the  
10 technical work I did was presented at the technical  
11 working group meeting in 2022.  
12 Q. What other documents are responsive to Request  
13 No. 1, that show your involvement in the issuance of the  
14 Fifth Methodology Order outside of the technical working  
15 group documents that you've just described?  
16 MR. BAXTER: Jennifer, I'm going to object to  
17 the question. To the extent your answer to the question  
18 would require you to disclose information regarding the  
19 Director's deliberative process on legal and policy  
20 considerations, you are instructed not to answer the  
21 question. Okay?  
22 THE WITNESS: Okay.  
23 Q. (BY MS. McHUGH) You may answer the question.  
24 What other documents do you have that show your  
25 involvement in the issuance of the Fifth Amended

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1 Methodology Order that are not uploaded or part of this  
2 technical working group information?  
3 A. I don't have any other documents that aren't  
4 part of the deliberative process.  
5 Q. So I'm not asking for documents that you have  
6 between you and the Director. What about you and other  
7 staff?  
8 MR. BAXTER: Candice, I'm going to just object  
9 with regards to that. Asking questions about  
10 communications with other staff is part of the  
11 Director's deliberative process. So again, I'm going to  
12 instruct the witness to not answer that question.  
13 Q. (BY MS. McHUGH) So if the documents didn't  
14 include the Director, I'm not understanding how those  
15 documents are part of the Director's deliberative  
16 process. The Director didn't look at them. How are  
17 they part of this process?  
18 MR. BAXTER: Candice, as the Director  
19 indicated at the last status conference, he relies upon  
20 agency staff to help support him in his efforts. And  
21 there are communications that go into that between  
22 agency staff. For example, Jennifer communicates with  
23 other staff about having QA/QC testing take place. And  
24 from the Department's perspective, all those  
25 communications relate to the Director's deliberative

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1 process, and the information they provide ultimately to  
2 the Director.  
3 So again, to the extent, Jennifer, that the  
4 question asks for information related to the Director's  
5 deliberative process as I've defined it here today, you  
6 are instructed not to answer that question.  
7 MS. McHUGH: I think we're allowed to find out  
8 whether the documents exist. Whether or not we're  
9 allowed to see the documents, or ask her about contents  
10 of the documents is something different.  
11 Q. (BY MS. McHUGH) My question to you, Jennifer,  
12 is, are there documents between you and the Department  
13 staff that are not uploaded, that have not been  
14 disclosed, that show your involvement in the issuance of  
15 the Fifth Amended Methodology Order?  
16 MR. BAXTER: And, Candice, I will just point  
17 out that Jennifer has already answered that question,  
18 and she said, "yes."  
19 Q. (BY MS. McHUGH) Okay. And what kinds of  
20 documents are those?  
21 A. You know, I did not go back and look through  
22 my emails in preparation for this deposition. So I  
23 can't accurately answer that question. I suspect if I  
24 went back and looked, that I have some email  
25 correspondence related to the Fifth Methodology Order.

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1 However, I don't know other than that.  
2 Q. Did you prepare any analysis, memos, those  
3 kinds of things that you would have shared?  
4 A. The only --  
5 MR. BAXTER: Again, Candice, I'm going to  
6 object to the question. It's asking Jennifer about what  
7 she prepared to support the Director in his deliberative  
8 process. We've identified the documents, the technical  
9 documents that she relied upon. And again, this witness  
10 is being provided for you to answer questions with  
11 regards to the technical analysis she provided the  
12 Director.  
13 MS. McHUGH: Well, my understanding, Garrick,  
14 is that she actually didn't look at the Deposition  
15 Notice at all before today. So she actually provided  
16 nothing. The Director told her what she could provide.  
17 But what I'm asking for her today is the kinds  
18 of documents that exist out there. Whether or not we  
19 ask about the content of those documents is a separate  
20 question. But actually, Jennifer has not provided any  
21 documents, because the Director apparently told her what  
22 document. So she hasn't even looked at this Notice. So  
23 I think we're entitled to ask if the document exists.  
24 MR. BAXTER: Candice, I think you are  
25 mischaracterizing the documents that have been provided.

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1 The question was identified to Ms. Sukow, what documents  
2 did you rely upon? She provided those documents that  
3 have been posted. And questions with regards to the  
4 memos, and other things that she prepared with regards  
5 to this matter, those go directly to the Director's  
6 deliberative process.  
7 MS. McHUGH: The content of the memo might.  
8 The existence of it does not.  
9 MR. BAXTER: And she affirmed their existence,  
10 but -- well, actually, I'm going to even say, that the  
11 existence of those are part of the deliberative process.  
12 So I'm going to the instruct the witness not  
13 to answer the question.  
14 MR. BUDGE: Candice, can I ask a question?  
15 MS. McHUGH: Sure, TJ.  
16 MR. BAXTER: TJ, are we just bouncing around  
17 to all the attorneys at this point in time?  
18 MS. McHUGH: Sure.  
19 MR. BUDGE: Well, rather than come back to it  
20 later. And so, Garrick, one important distinction that  
21 I think we need to have a discussion, because it's going  
22 to affect the whole deposition, is the difference  
23 between information that was provided to the Director  
24 for consideration, and his deliberative process. So  
25 those are two different things.

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1 And what Candice is trying to find out is just  
2 what information was provided. And we need to  
3 understand if you are going to prevent the deponent from  
4 even identifying information that was provided to the  
5 Director, that significantly limits what we can do here  
6 today. But that is an important distinction.  
7 Everything, you know, the stuff that was  
8 posted to the website, that's just information. And  
9 other analyses or memos that Jennifer may have created,  
10 that's information. What the Director did with that,  
11 you know, his deliberative process.  
12 So by your objections, I'm understanding that  
13 you are not even going to let us ask about the  
14 information that was provided; is that correct?  
15 MR. BAXTER: TJ, Candice's question was with  
16 regards to emails and memorandums provided to the  
17 Director. That was --  
18 MS. McHUGH: Actually, I think my question was  
19 any emails that reflect her involvement in issuance of  
20 the Fifth Methodology Order. And then the next question  
21 I asked is, did she prepare any memos that show her  
22 involvement in the Fifth Methodology Order that have not  
23 been uploaded to the website?  
24 MR. BAXTER: Jennifer, why don't you go ahead  
25 and answer the question.

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1 THE WITNESS: No, I did not prepare any memos  
2 that are not posted to the website. I prepared the  
3 presentations of the technical working group that is  
4 posted to the website. And that contains the technical  
5 information that was provided to the Director.  
6 Q. (BY MS. McHUGH) Did you prepare any analysis,  
7 graphs, those kinds of things that show your involvement  
8 in the issuance of the Fifth Methodology Order that are  
9 not uploaded?  
10 A. I don't recall.  
11 Q. Okay. We'll move down to Question No. 2. Are  
12 you aware of any documents, whether or not they were  
13 authored by you, that reflect other Department employees  
14 input on the Department's decision to move from the  
15 steady state to transient modeling in the Fifth  
16 Methodology Order that are not uploaded to the website?  
17 MR. BAXTER: Candice, I'm going to object to  
18 the question. Again, you are asking this witness about  
19 communications authored by other people that were  
20 provided that employee's input. And that employee's  
21 input relates to the Director's deliberative process.  
22 So I'm going to instruct the witness not to  
23 answer the question.  
24 Q. (BY MS. McHUGH) So for on our Request No. 2,  
25 you are saying she can't say whether or not she knows of

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1 any other documents relating to other people's input?  
2 MR. BAXTER: The existence of those documents  
3 gets into the Director's deliberative process.  
4 Q. (BY MS. McHUGH) Jennifer, are all the  
5 documents that you relied on or that you understand  
6 reflect the analysis to go from city to state to  
7 transient modeling in the Fifth Methodology Order, are  
8 they uploaded to the website?  
9 A. I'm sorry. Can you specify what you mean by  
10 "documents"?  
11 Q. I would say, memos, analysis, written  
12 communication, presentations.  
13 A. So that the only work product I prepared was  
14 the presentation I gave to the technical working group.  
15 If you tagged me before when you asked that. But then  
16 you said, well, documents includes emails. So,  
17 obviously, there is no email posted to the website.  
18 Q. Jennifer, would you look at Request No. 3.  
19 You can just read it to yourself. And answer whether or  
20 not that information has been uploaded to the website?  
21 A. I am not aware of any memoranda or reports  
22 authored by myself or others -- well, okay. So authored  
23 by me, there is the presentation that shows the change  
24 in curtailment dates likely to be curtailed, or examples  
25 of past years as a result of the change to transient

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1 modeling. In the model files, there is a POD file that  
2 has water rights and their priority dates.  
3 Q. And have those been provided to us?  
4 A. Those were posted with the -- yeah, that POD  
5 file is posted on the website. And specifically there  
6 is a copy of it in the files that were posted with the  
7 as-applied order.  
8 Q. And are you aware of any other documents  
9 relating to the number of water rights to be curtailed,  
10 the comparison authored by others?  
11 A. No, not that I'm aware of.  
12 (Dave Colvin joining deposition via Zoom.)  
13 Q. (BY MS. McHUGH) if you can look at Request  
14 No. 4?  
15 A. I believe those files are all posted in the  
16 supporting files that were posted with the as-applied  
17 order. I believe those were also put in the materials  
18 that myself and Matt Anders would rely on for this  
19 hearing.  
20 Q. And if you could look at Request No. 5?  
21 A. So when we calculate the curtailment date,  
22 there is a little bit of trial and error. And we do  
23 calculate other curtailment dates that don't end up  
24 being the one that goes in the order. And there  
25 are -- I do not include those files in what's posted,

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1 just because I don't want there to be confusion about  
2 which -- you know, which one was the final. But those  
3 files do exist for the other priority dates. And, no,  
4 those were not included.  
5 Q. And can you provide those in a separate file  
6 so that there isn't any confusion?  
7 A. I don't see any reason why I could not include  
8 those, no. And those are -- yeah.  
9 Q. And that's just limited to the files and  
10 output relative to the models. What about communication  
11 and notes relative to those other curtailment runs?  
12 A. There would not be communications about those  
13 other curtailment dates. It's just part of the process  
14 that I do to find the appropriate curtailment date.  
15 MS. McHUGH: Okay. We would request that  
16 those get posted. You can clarify that that's what they  
17 are referring to, Request No. 5.  
18 MR. BAXTER: We'll make a note of that,  
19 Candice.  
20 Q. (BY MS. McHUGH) Okay. No. 6, if you could  
21 look at that?  
22 A. The only steady state runs I did were for the  
23 only -- yeah, the only steady state runs, I did were for  
24 the December 10, 1953, curtailment date. And those, I  
25 honestly don't recall if I included those in the

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1 materials that went online. I think I did, but I would  
2 have to check.  
3 Q. Okay. And that was to Request No. 6. If you  
4 could look at Request No. 7?  
5 A. Yeah, I was not around when the  
6 Department -- when the previous Director made the  
7 decision to use steady state. And I am not aware of any  
8 documents related to that.  
9 Q. Okay. No. 8?  
10 A. What is "paragraph 1 above" referring to?  
11 Q. It's any and all documents reflecting your  
12 involvement in the issuance of the Fifth Amended  
13 Methodology Order. This is asking for any internal and  
14 external communications pertaining to that information?  
15 MR. BAXTER: So once again, Jennifer, to the  
16 extent the answer to the question would require you to  
17 disclose information regarding the Director's  
18 deliberative process on legal or policy considerations,  
19 you are instructed not to answer that question.  
20 Q. (BY MS. McHUGH) Jennifer, did you have any  
21 conversations with anybody outside of the Department  
22 regarding the Director's Fifth Methodology Order?  
23 A. Not that I recall.  
24 Q. If you could look at Request No. 9?  
25 A. I am not aware of any notices or announcements



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1 outside of the presentations we gave to the technical  
2 working group and the Fifth Methodology Order.  
3 Q. Okay. If you can look at Request No. 10. And  
4 paragraph No. 3 is any memorandum or reports authored by  
5 you describing the change in the number of water rights.  
6 That's Request No. 3.  
7 A. There is an internal communication where I  
8 request our GIS analyst to update the POD file for me.  
9 And then that staff member sent it to me.  
10 Q. And has that been provided?  
11 A. No.  
12 Q. Has the GIS POD file been provided?  
13 A. Yes.  
14 Q. If you could look at No. 11?  
15 MR. BAXTER: Again, Jennifer, to the extent  
16 your answer to the question would require you to  
17 disclose information regarding the Director's  
18 deliberative process on legal or policy considerations,  
19 and specifically it's asking about the Director's  
20 decision to transition. The question that Ms. McHugh  
21 just asked specifically pertains to the Department's  
22 decision to transition is how the question is framed.  
23 To the extent that information would require you to  
24 disclose that deliberative process, you are instructed  
25 not to answer the question.

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1 Q. (BY MS. McHUGH) Jennifer, do those documents  
2 exist? Are there documents that exist that are  
3 responsive to Request No. 11?  
4 A. I don't know.  
5 Q. Were you part of the Director's deliberative  
6 process to determine whether or not to move from steady  
7 state to transient state?  
8 MR. BAXTER: Candice, I'm going to the  
9 question. I think even just understanding who was  
10 involved in the Director's deliberative process is in  
11 and of itself getting to that deliberative process. So  
12 I'm going to instruct the witness to not answer the  
13 question.  
14 The Director has, as he indicated at the  
15 status conference, said he relied upon technical staff  
16 to provide him technical data. And, you know, for  
17 example, as he identified in the notice of materials the  
18 Department witnesses may rely upon at hearing, and  
19 intent to take official notice.  
20 He's identified Ms. Sukow to testify with  
21 regards to steady state and transient modeling and  
22 simulations for the Eastern Snake Plain Aquifer Model,  
23 and calculations of curtailment priority dates. So  
24 she's able to answer questions as to her involvement as  
25 to that. But your question as to Director's

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1 deliberative process, again I'm going to instruct the  
2 witness not to answer the question.  
3 MS. McHUGH: So she's been instructed to not  
4 answer the question whether or not she was part of the  
5 Director's deliberative process, that she was part of  
6 that process?  
7 MR. BAXTER: Yes.  
8 Q. (BY MS. McHUGH) Jennifer, did you provide  
9 documents and technical analysis relating to the  
10 transition from steady state to transient?  
11 A. Yes.  
12 Q. And who did you provide that information to?  
13 A. I provided it to the technical working group,  
14 and other IDWR staff in the hydrology section, and to  
15 the Director.  
16 Q. And who in the hydrology section did you  
17 direct it to?  
18 A. Matt Anders.  
19 Q. Anyone else?  
20 A. Well, the other hydrology staff that  
21 participated in the technical working group were  
22 also -- also saw that presentation.  
23 Q. And is that information that you provided to  
24 Matt Anders and the other hydrology, has that all been  
25 disclosed and uploaded?

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1 A. Yes, it's the same information I presented to  
2 the technical working group.  
3 Q. Is there any other information that you  
4 provided that's not in those documents?  
5 A. No.  
6 Q. If you could look at Request No. 12?  
7 A. Well, Request No. 12 appears to me to be  
8 redundant to the Request No. 5. Because Request No. 5  
9 includes communications. So I have already answered  
10 that.  
11 Q. Okay. And did you have any communications  
12 with people outside of the Department, other than the  
13 technical working group people, relative to the ESPAM  
14 transient curtailment runs?  
15 A. Not that I recall.  
16 Q. Okay. If you could look at Request No. 13?  
17 A. I don't understand what credits for accruals  
18 is referring to. I don't think there are any credits  
19 for accruals.  
20 Q. So in looking at Request No. 13, to the extent  
21 that you understand the request, do you believe that the  
22 documents have been provided or they don't exist?  
23 A. I don't think credits for accruals exist,  
24 so...  
25 Q. Okay.

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1 A. I guess my answer would be, no, I don't  
2 understand the request.  
3 Q. Okay. No. 14, if you could look at that.  
4 A. It would be the same as my answer to No. 7. I  
5 was not employed by the Department at the time that the  
6 former director made the decision to use steady state.  
7 Q. Okay. Request No. 15?  
8 A. That information is included in the supporting  
9 documents that were provided.  
10 (Erick Powell joined deposition via Zoom.)  
11 Q. (BY MS. McHUGH) Okay. No. 16?  
12 A. Sorry. I'm still trying to figure out what  
13 you are asking for here.  
14 Q. Let me see if I can help you out here. That's  
15 relative to the Department's announcements of moving  
16 from steady state to transient state.  
17 A. I think what my answer was that the notices  
18 and announcements that I am aware of are the  
19 presentation to the technical working group and the  
20 Fifth Methodology Order. So I think I've already  
21 answered this question.  
22 Q. Okay. If you could look at No. 17?  
23 A. I included the predictive uncertainty analysis  
24 for the current version of ESPAM. I included that  
25 report in the materials that were provided.

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1 Q. Okay.  
2 A. There is currently no trim line for the  
3 Surface Water Coalition delivery call.  
4 Q. Was a trim line discussed?  
5 A. No.  
6 Q. Is there any documents or reports or analyses  
7 at all that would ever relate to a trim line or the  
8 possible use of a trim line?  
9 A. That was not one of the issues identified to  
10 be revisited in the preparation of the Fifth Methodology  
11 Order. The list of issues to be looked at was set forth  
12 prior to when the technical working group was convened,  
13 and that was not an issue that was brought up.  
14 Q. And who prepared that list?  
15 A. I don't know.  
16 Q. And has that list been provided?  
17 A. That list was sent out by Matt Anders to the  
18 technical working group at the beginning of the  
19 technical working group, when it was convened last fall.  
20 Q. And who developed that list?  
21 A. I don't recall.  
22 Q. Sorry. You answered that question. Do you  
23 know whether or not there was -- did you provide input  
24 on that list to anybody?  
25 A. No.

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1 Q. Are you aware of any documents or drafts of  
2 the list before it was sent out?  
3 A. No.  
4 Q. How was the list provided to the technical  
5 working group?  
6 A. I don't recall.  
7 Q. If you look at Request No. 18?  
8 A. So the analysis I did for this, I did the  
9 analysis you are asking about here for years 2021 and  
10 2022, and that was presented to the technical working  
11 group in the fall of 2022. I do not recall whether or  
12 not they asked us to provide the model output files to  
13 them. And I did not include those model files in the  
14 materials that were sent out just recently as part of  
15 this proceeding.  
16 Q. Can you provide those model files?  
17 A. Yes.  
18 MR. BAXTER: Yes, we can provide those.  
19 Q. (BY MS. McHUGH) Okay. And since the issuance  
20 of the order on April 21st, have you done any analysis,  
21 model analysis relative to this upcoming irrigation  
22 season?  
23 A. After the as-applied order was issued?  
24 Q. Yes.  
25 A. No.

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1 Q. Okay. If you could look at Request No. 19?  
2 A. There is a report comparing the curtailment  
3 scenario for ESPAM2.1 and ESPAM2.2. And that is in the  
4 ESPAM documentation that I included in the files. The  
5 model files associated with that are posted on the ESPAM  
6 website. I did not include all of the model files in  
7 what was posted for this. It's a large amount of files.  
8 But it is out there available publicly.  
9 Q. And it's on the Department's website somewhere  
10 else just not in this?  
11 A. Just not on this.  
12 Q. Okay.  
13 A. If you wanted to add that to this, we could.  
14 Q. Or if you could provide a link just so people  
15 understand where it's located, that's fine. Would that  
16 work?  
17 A. I believe there is a link in the report.  
18 Q. Okay. Fair enough. If you could look at  
19 No. 20?  
20 A. Yeah.  
21 MR. BAXTER: So, Candice --  
22 THE WITNESS: That doesn't exist.  
23 Q. (BY MS. McHUGH) Okay.  
24 A. Sorry.  
25 MR. BAXTER: That's okay. I was slow.

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1 Q. (BY MS. McHUGH) I'm sorry. Say that one more  
2 time?  
3 A. I just said that that doesn't exist. I have  
4 not compared differences between modeled project  
5 efficiencies between ESPAM2.1 to 2.2.  
6 Q. (BY MS. McHUGH) I thought someone said my  
7 name, but maybe I misheard that.  
8 Have you done analysis for model efficiencies  
9 for the Surface Water Coalition entities?  
10 A. No.  
11 Q. Would you look at Request No. 21?  
12 MR. BAXTER: So again, Candice, I'm going to  
13 object to the question in that it's asking for the  
14 Department's determination reasoning used in steady  
15 state modeling.  
16 So, Jennifer, to the extent your answer to the  
17 question would require you to disclose information  
18 regarding the Director's deliberative process regarding  
19 legal and policy considerations, you are instructed to  
20 not answer the question. But if there is other  
21 information that you can identify that is not related to  
22 the deliberative process, you can answer the question.  
23 MS. McHUGH: Just to the clarify that. This  
24 is reasoning to use steady state modeling in previous  
25 as-applied orders, not moving from steady state to

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1 transient in this order.  
2 THE WITNESS: And I've already answered this  
3 question I think twice. I was not here when that  
4 decision was made. And I am not aware of any  
5 documentation of that.  
6 Q. (BY MS. McHUGH) Okay. Request No. 22?  
7 A. And again, item 18 says, communication. So  
8 this is redundant. I've already answered this question.  
9 Q. And Question 18 is using the model evaluation  
10 to apply into transient model as a hindcast. How are  
11 you instructed to perform that analysis?  
12 A. I was instructed by Matt Anders that that was  
13 one of the issues identified that they wanted to discuss  
14 in the 2022 technical working group. And I was the one  
15 who made the decision that modeling, what would have  
16 happened in 2021 and 2022, would be a good example of  
17 showing, you know, what the effect of changing to  
18 transient modeling would be on the curtailment priority  
19 dates.  
20 Q. And did Matt Anders ask you that orally or was  
21 that in an email?  
22 A. I believe orally, yes.  
23 Q. Was it in a meeting where other people were  
24 present?  
25 A. No.

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1 Q. If you could look at No. 23? Did I Skip 22?  
2 No, 23.  
3 A. So in addition to the report that I identified  
4 in item 19, there were communications with the Eastern  
5 Snake Hydrologic Modeling Committee about those  
6 differences. So they had the opportunity to review  
7 those differences before we rolled out the model.  
8 Q. And are those communications with the Eastern  
9 Snake Plain Hydrologic Modeling Committee available on  
10 the Department's website?  
11 A. Well, the presentations to them would be -- I  
12 know I sent out a draft copy of the report to them and  
13 gave them the opportunity to make comments on it. And  
14 there was an email sending that out to them, and  
15 soliciting their comments. I don't recall receiving any  
16 comments on that report from the ESHMC, but I would have  
17 to be able to go back to my email and check.  
18 Q. Okay. Can you do that?  
19 A. Yes.  
20 Q. No. 24?  
21 A. Well, again, I told you the analysis that you  
22 asked about in paragraph 20 hasn't been done.  
23 Q. Okay.  
24 A. So nothing exists.  
25 Q. And No. 25?

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1 A. Okay. So for the fourth time, I was not here  
2 when the former director decided to use steady state  
3 modeling. And I am not aware of any documentation of  
4 that decision.  
5 Q. Okay. Thank you. And normally, Jennifer,  
6 that would have been given to you. And so that would  
7 have been a little less onerous, because you would have  
8 been able to say, there is no documents to Request 5 to  
9 say, 12, 15. But since you haven't seen it before, we  
10 had to make a record of what was clear on that. So  
11 thank you for walking through that.  
12 Now, that we have gotten that kind of cleared  
13 up. I would like to just have you explain a little bit  
14 of who you are, and what your background is, and what  
15 your role is with the Department. And then I will go  
16 forward with the questions.  
17 So, Jennifer, what is your background? Can  
18 you give me your educational background?  
19 A. I have a bachelor's degree in environmental  
20 geology and technology from the University of North  
21 Dakota. And a master's degree in civil and  
22 environmental engineering from Utah State University.  
23 Q. And how long have you worked for the  
24 Department?  
25 A. I've worked in my current position in the

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1 ground water modeling group since June of 2010. So not  
2 quite 13 years.  
3 Q. And what is your current position?  
4 A. My position title is Engineer, Technical 2.  
5 Q. And do you supervise people?  
6 A. No.  
7 Q. And who is your immediate direct supervisor?  
8 A. Sean Vincent.  
9 Q. And what is your main function at the  
10 Department?  
11 A. My main function is calibrating ground water  
12 flow models, and providing technical analyses with those  
13 models to address various issues that come up.  
14 Q. Do you consider yourself an expert on ground  
15 water modeling?  
16 A. Yes.  
17 Q. And do you act in that capacity for the  
18 Department as their ground water modeling expert?  
19 A. Yes.  
20 Q. And are you an expert on the various models  
21 used for the Eastern Snake Plain Aquifer, that are  
22 sometimes referred to as "ESPAM"?  
23 A. I'm not sure what you mean by "various  
24 models."  
25 Q. Fair enough. Do you see yourself as an expert

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1 on the ESPAM model --  
2 A. Yes.  
3 Q. -- and its multiple divisions? Okay.  
4 When was the decision made that the Fourth  
5 Methodology Order needed to be amended?  
6 A. I don't know.  
7 Q. You don't know if the decision to amend the  
8 Fourth Methodology Order happened before the technical  
9 working group or after?  
10 A. I don't know. I did not make the decision to  
11 amend it.  
12 Q. When were you told that it was going to be  
13 amended?  
14 MR. BAXTER: Candice, I'm going to object to  
15 the question. I think that's getting to the Director's  
16 deliberative process with regards to the Director's  
17 decision to amend the methodology order.  
18 I'm going to instruct the witness not to  
19 answer the question.  
20 MS. McHUGH: So let me understand this,  
21 Garrick. You are saying that the Director's  
22 deliberative process includes when there was a decision  
23 to be made, that it was going to be amended?  
24 MR. BAXTER: Yes, the temporal aspects of the  
25 Department's or the Director's decision-making is

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1 directly related to the deliberative process.  
2 Q. (BY MS. McHUGH) Jennifer, was there a meeting  
3 to your knowledge within the Department to discuss  
4 whether or not to the amend the Fourth Methodology  
5 Order?  
6 MR. BAXTER: Again, Candice, that gets to the  
7 Director's deliberative process the Department having a  
8 meeting on a specific issue. Now, to the extent you  
9 were asking her to reveal internal discussions? I'm  
10 going to instruct the witness not to answer the  
11 question. To the extent there are -- I can't  
12 specifically remember Candice's questions if it asked  
13 about external meetings to amend the methodology order.  
14 If that was the question as you understood it,  
15 and there were such meetings, you can answer that aspect  
16 of it.  
17 THE WITNESS: I -- yeah, the first thing I'm  
18 aware of, Candice, is when Matt Anders told me that they  
19 were going to convene the technical working group in the  
20 fall of 2022. And asked me to prepare for the  
21 presentation I ultimately gave on application of steady  
22 state modeling and transient modeling to calculate a  
23 curtailment priority date.  
24 Q. (BY MS. McHUGH) So was it your understanding  
25 when Matt Anders asked you to prepare that information

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1 that the Department was considering amending the Fourth  
2 Methodology Order?  
3 A. I believe that's what was communicated to the  
4 technical working group as the purpose for convening.  
5 So, yes, that was my understanding.  
6 Q. What was your understanding of the purposes  
7 for the technical working group? It sounds like one of  
8 the purposes was to consider amending the Fourth  
9 Methodology Order? What were all the purposes that you  
10 understood that group was convened for?  
11 A. My understanding is there is a statement  
12 somewhere in the methodology order that says the  
13 Director has the obligation to review the methodology  
14 periodically as new information becomes available.  
15 Q. And what portions of the Fourth Methodology  
16 Order did you understand were being looked at and  
17 considered to be amended or updated?  
18 A. So I was only tasked with looking at the  
19 calculation of the curtailment priority date. I am  
20 aware that there were other items that were identified  
21 to the technical working group. But I did not  
22 participate in those, so I cannot recite those for you.  
23 Q. And who identified those other purposes to the  
24 technical working group; do you know?  
25 A. I don't know.

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1 Q. And who decided to look at whether or not a  
2 move from steady state to transient modeling should be  
3 something looked at when amending the Fourth Methodology  
4 Order?  
5 A. I don't know.  
6 MS. McHUGH: Could we hand, Jennifer, Exhibit  
7 No. 2, which would be the final order regarding -- no,  
8 it would be the amended Fifth Methodology Order would be  
9 [Exhibit 2](#)?  
10 MR. BAXTER: Do you guys have that one?  
11 MR. ANDERSON: I do.  
12 ([Exhibit 2](#) marked.)  
13 MR. ANDERSON: And, Candice, what was going to  
14 probably be No. 3?  
15 MS. McHUGH: [Exhibit 3](#) is going to be the  
16 April forecast.  
17 MR. ANDERSON: The as-applied order?  
18 MS. McHUGH: Yes.  
19 Q. (BY MS. McHUGH) Jennifer, do you have Exhibit  
20 No. 2 in front of you?  
21 A. Yes.  
22 Q. And can you tell me what it is?  
23 A. It's the "Fifth Amended Final Order Regarding  
24 Methodology for Determining Material Injury to  
25 Reasonable In-Season Demand and Reasonable Carryover."

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1 Q. Have you seen this document before?  
2 A. Yes.  
3 Q. Have you read it?  
4 A. Parts of it.  
5 Q. Did you review any specific paragraphs or  
6 provide information for specific paragraphs in this  
7 order?  
8 A. Yes.  
9 Q. Okay. Perhaps we could take, just to make  
10 this more efficient, maybe we should take a brief break  
11 while [Exhibit 3](#) is being copied. And then Jennifer can  
12 look at [Exhibit 2](#) and like mark the paragraphs that she  
13 had input on or drafted, and then we can come back, and  
14 then we can make it more efficient?  
15 THE REPORTER: We already have [Exhibit 3](#), I  
16 think.  
17 MS. McHUGH: Oh, we do. Fair enough.  
18 ([Exhibit 3](#) marked.)  
19 Q. (BY MS. McHUGH) Okay. Jennifer, do you know  
20 what paragraphs?  
21 A. I am looking for them.  
22 Q. Okay.  
23 A. There is a lot of stuff in here I did not work  
24 on.  
25 Q. Well, that will make it easier.

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1 A. Yes.  
2 MR. BAXTER: So because the Director has  
3 identified Jennifer as a witness to talk about  
4 determination of curtailment data, I think that starts  
5 on page 29, Jennifer.  
6 THE WITNESS: Yes, so findings of fact section  
7 F.  
8 Q. (BY MS. McHUGH) Okay. Findings of fact  
9 section F have paragraphs numbered 81 through 89. Did  
10 you draft these paragraphs or what was your role?  
11 A. These paragraphs, I participated in drafting  
12 these paragraphs. I think some of the wording was  
13 edited by others to hopefully make it more accessible to  
14 people that are less involved in the technical aspects  
15 of modeling. But I think you will find that the  
16 information conveyed in these paragraphs was conveyed in  
17 the presentation of the technical working group in 2022.  
18 Q. Okay. If you'll look at paragraphs 82 and 83.  
19 First of all, paragraph 82, it states that "ESPAM  
20 simulations can be either steady state or transient."  
21 Do you see that?  
22 A. Yes.  
23 Q. Hasn't that always been true?  
24 A. Yes.  
25 Q. So what was the impetus to now use ESPAM

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1 simulations in a transient mode to determine curtailment  
2 date versus steady state, what changed?  
3 A. I was -- the question that was posed to me is  
4 does the steady state analysis -- you know, does doing a  
5 steady state analysis to calculate the curtailment date,  
6 does that practice result in getting water to the senior  
7 in the time of need, or would a transient analysis be  
8 better? So it wasn't a change in the technical  
9 information. It was a change apparently in the  
10 understanding of the administration. But I don't know  
11 what the impetus for that was.  
12 Q. When you say that it was a change in  
13 administration, was there an understanding that the  
14 orders prior to the Amended Fifth Methodology Order were  
15 flawed?  
16 A. Again, I don't know what the impetus for the  
17 change in understanding from by administration was,  
18 other than what they identified on a previous page in  
19 this order. Yeah. So on page 2, it says, "Further the  
20 Department now has multiple years of experience with the  
21 methodology to better understand the impact of applying  
22 steady state modeling versus transient modeling to  
23 determine a curtailment priority date that would supply  
24 adequate water to the senior water right holders."  
25 Q. So did the methodology orders 1 through 4

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1 properly address material injury to senior water right  
2 users?  
3 A. I don't know. That's a legal question, or a  
4 policy question, one or the other. It's not a technical  
5 question.  
6 Q. In the Fourth Methodology Order, did you  
7 understand whether or not a transient model run would  
8 provide a different answer on the amount of water that  
9 the senior could expect?  
10 A. Yes, I did.  
11 Q. Did you share that information with the  
12 Department, anyone else at the Department?  
13 A. When I first was involved with doing the  
14 analysis for the earlier method diversions of the  
15 methodology order, my role at that time was to do the QA  
16 checks for Allan Wylie, who was the senior modeler at  
17 that time.  
18 Q. Did you -- go ahead.  
19 A. At the time that I did the first QA check for  
20 him, I asked him, I said, "Well, what time frame are we  
21 looking for the shortfall to be addressed under? So  
22 what time frame are we looking for those benefits to  
23 accrue to the reach?" And he said "Oh, we don't do  
24 that. We're doing a steady state analysis even though  
25 that won't get the water to the reach during the time of

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1 need." And he told me that that was what he was  
2 directed to do by a former director by Karl Dreher. And  
3 so this is just hearsay, I guess. But my understanding  
4 was that was a decision made by Karl Dreher. And that's  
5 the way we had done it since then.  
6 Q. And do you remember what methodology order  
7 that was that you first had that conversation on?  
8 A. I do not.  
9 Q. Had you done any transient model runs for  
10 methodology of prior methodology orders?  
11 A. No.  
12 Q. Had you seen any transient model runs done on  
13 prior methodology orders?  
14 A. Not for the -- not to calculate the  
15 curtailment priority date, no.  
16 Q. What were they done for?  
17 A. There was in one of the methodology orders a  
18 transient analysis that was used to reduce the ground  
19 water users obligation for the reasonable carryover and  
20 allow them to phase that in. And that was removed  
21 because it was remanded by the court as being an  
22 inappropriate application.  
23 Q. Did you work on the Amended Fourth Methodology  
24 Order?  
25 A. Did I -- sorry. Say that again.

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1 Q. Did you work on the Fourth Methodology Order?  
2 A. No.  
3 Q. Was that prior to your time?  
4 A. I was here, I believe, at the time that they  
5 issued that, but I did not work on it.  
6 Q. How many years does it take to understand that  
7 there is a difference between the impact of applying a  
8 transient model run versus a steady state model run, and  
9 what that will get you as far as output?  
10 A. I'm sorry. I'm not sure -- I don't understand  
11 the question.  
12 Q. If you look on page 2 that you refer to, it  
13 says, "The Department now has multiple years of  
14 experience to understand the impact of applying steady  
15 state modeling versus transient state modeling." And  
16 I'm just asking you, how many years does it take to  
17 understand the difference?  
18 A. I didn't write that statement, and I can't  
19 answer that question. I --  
20 Q. Well, it sounded like you understood it when  
21 you first got there, when you were working with Allan  
22 Wylie; right?  
23 A. Yes.  
24 Q. And ESPAM has always been a transient model;  
25 correct?

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1 A. Correct.  
2 Q. So understanding that transient model output  
3 and steady state model output seems to be kind of just  
4 understanding the words makes it possible to understand  
5 the difference in the output; correct?  
6 A. It does for me. I'm not sure that's true for  
7 everybody.  
8 Q. Okay. And your role at the Department is  
9 their expert in modeling; right?  
10 A. Yes.  
11 Q. And is that what Mr. Wylie's role was prior to  
12 you?  
13 A. Yes.  
14 Q. Did Mr. Wylie understand the difference  
15 between transient and steady state output?  
16 A. Yes.  
17 Q. So what is the difference relating to the 2023  
18 ESPAM model output than was different in 2010?  
19 A. The difference would be that in 2010, the  
20 Department was still using ESPAM1.1, which was  
21 calibrated with six-month time periods and stress  
22 periods. In 2023, we're using ESPAM2.2, which is  
23 calibrated with one month stress periods and half-month  
24 time steps.  
25 Q. And when did the calibration between ESPAM1.1

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1 and ESPAM -- when the did ESPAM calibration change to  
2 the half month time step?  
3 A. With ESPAM2.1.  
4 Q. And when did that happen?  
5 A. I believe that was rolled out in 2013.  
6 Q. So did you understand in 2013, the difference  
7 between the model output for transient versus steady  
8 state?  
9 A. Yes.  
10 Q. So what is the difference between relating to  
11 the ESPAM model output in 2013 versus 2023?  
12 A. Well, I mean there is some changes between  
13 ESPAM2.1 and 2.2. But they were both calibrated with  
14 using the same time discretization.  
15 Q. And the time discretization is the key piece  
16 for how fine the transient model prediction can occur;  
17 is that true?  
18 A. Probably the -- tell me how you said that  
19 again.  
20 Q. Okay. And I probably said it less articulate  
21 than you would want me to. So the time step, the half  
22 month time step in predicting like when -- that time  
23 step is important I guess to determining in a transient  
24 model run, like when water, or when the output is going  
25 to be realized; is that true?

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1 A. Yes, that's true.  
2 Q. So in 2013, the time step being a half month  
3 is the same time step as in 2023 under the same current  
4 version of the model?  
5 A. Yes.  
6 Q. And there were curtailment orders issued  
7 between 2013 and 2023 by the Department; correct?  
8 A. Yes.  
9 Q. And those all use steady state?  
10 A. Yes.  
11 Q. Even though the model was a transient model  
12 and had the half month time step since 2013?  
13 A. Yes.  
14 Q. And the first time you understood that the  
15 Department was considering moving from a transient model  
16 output for curtailment purposes was last year when Matt  
17 Anders tasked you with the runs that you were going to  
18 present to the technical working group; is that true?  
19 A. I had been asked questions about it earlier in  
20 the year.  
21 Q. And who asked you those questions?  
22 MR. BAXTER: I'm going to object. Again, this  
23 gets to --  
24 Let me frame it this way, Jennifer. To the  
25 extent the question is going to have you get to the

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1 deliberative process that the Director related to this  
2 policy decision of transitioning from transient to  
3 steady state, and that includes communications between  
4 you and other IDWR employees that would then support the  
5 Director's, and be used in the Director's determination.  
6 Ultimately, you are instructed not to answer the  
7 question.  
8 THE WITNESS: Yeah, I can't answer the  
9 question.  
10 Q. (BY MS. McHUGH) Did you have any  
11 conversations with people outside the Department  
12 relative to using transient model versus a steady state  
13 model to predict curtailment dates?  
14 A. Not outside of the technical working group.  
15 Q. Okay. Back to [Exhibit No. 2](#). If I could have  
16 you look at page 2 of that same paragraph that we had  
17 talked about earlier. And there is a sentence in there  
18 that starts with "in contrast." It says, "In contrast,  
19 the current version was calibrated using monthly stress  
20 periods and half-month time steps. A refinement that  
21 facilitates in-season transient modeling for calculating  
22 the response for curtailment in ground water use." Do  
23 you see that sentence?  
24 A. I do.  
25 Q. And that actually occurred in 2013?

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1 A. Yes, it did.  
2 Q. I'm sorry. I'm just flipping through, I have  
3 the order to make sure I got my other questions done.  
4 I'm going to set aside [Exhibit 2](#) for now.  
5 If we could look at [Exhibit 3](#), which is the  
6 "Final Order Regarding April 2023 Forecast Supply." Do  
7 you have that in front of you?  
8 A. Yes.  
9 Q. Have you seen this document before?  
10 A. Yes.  
11 Q. Did you author, or review, or edit any  
12 paragraphs within this order?  
13 A. Yes.  
14 Q. Can you identify those?  
15 A. Well, they would be the ones that are related  
16 to the modeling. So I inserted the curtailment date,  
17 and the proportionate share volumes in Footnote 5.  
18 Q. So on page 5, you would have inserted for  
19 paragraph 6, the December 30th, 1953 date. And then  
20 what information in Footnote 5?  
21 A. The proportionate share calculated for A & B  
22 Irrigation District and the proportionate share  
23 calculated for IGWA.  
24 Q. And as to Footnote 5, how you came to those  
25 proportionate shares, is that information included in

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1 the information that's been uploaded to the Department's  
2 website?  
3 A. Yes.  
4 Q. And then did you do anything relative to the  
5 reasonable carryover shortfall --  
6 A. No.  
7 Q. -- calculation?  
8 A. I did not calculate any of the other -- well,  
9 there is no reasonable carryover shortfall in this  
10 order.  
11 Q. Fair enough.  
12 A. But, yeah.  
13 Q. It just recites the shortfall from the prior?  
14 A. Oh, yeah. Yeah, I did not work on any other  
15 parts of the order other than the curtailment date and  
16 the proportionate shares.  
17 Q. Have you discussed this [Exhibit 3](#) with anyone  
18 outside of the Department?  
19 A. No.  
20 Q. Have you done any analysis relating to this  
21 final order since the issuance of this order on April  
22 21st of this year?  
23 A. No.  
24 Q. Have you been asked to do any analysis?  
25 A. No.

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1 MS. McHUGH: Can we hand Ms. Sukow what's been  
2 marked as [Exhibit 4](#), it's the December 23rd, 2022  
3 summary of recommended technical revisions to the Fourth  
4 Amended Final Order. It's a one-page document. Do you  
5 guys have that?  
6 MR. ANDERSON: Probably.  
7 MR. BAXTER: Dylan is digging that up for us.  
8 MS. McHUGH: Sure.  
9 MR. ANDERSON: You said "Summary of  
10 Recommended Technical Revisions to the Fourth Amended  
11 Final Order."  
12 MS. McHUGH: Yes, okay.  
13 MR. ANDERSON: And maybe if you wouldn't mind  
14 just showing it in front of your face and making sure  
15 that that is the correct document. Just so she can see  
16 it and make sure it's the correct one that she is  
17 thinking of.  
18 ([Exhibit 4](#) marked.)  
19 THE WITNESS: I'm not sure she'll be able to  
20 see anything.  
21 MR. BAXTER: I think that was upside down.  
22 Q. (BY MS. McHUGH) I mean, that was upside down?  
23 A. Well, that's not going to help; is it?  
24 Q. That was okay. Yes, that's it. So, Jennifer,  
25 you've been handed what's been marked as [Exhibit 4](#). Can

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1 you identify that document?  
2 A. It's the "Summary of Recommended Technical  
3 Revisions to the Fourth Amended Final Order Regarding  
4 Methodology." Do you want me to read the whole thing?  
5 Q. No, that's fine. We're on the same page as  
6 far as --  
7 A. Dated December 23rd, 2022, authored by Kara  
8 Ferguson and Matt Anders.  
9 Q. Have you seen that document before?  
10 A. Yes.  
11 Q. Did you review or give any input on that  
12 document?  
13 A. I think I reviewed it, but I don't think I had  
14 any significant input on it.  
15 Q. And if you move down to the middle, it starts  
16 with the paragraph, "Based on the information presented  
17 at the meetings and distributed to the technical working  
18 group, IDWR staff have the following preliminary  
19 technical recommendations." Do you see that there?  
20 A. Yes.  
21 Q. And at that point was IDWR staff recommending  
22 that the Director use a transient model run to determine  
23 curtailment date?  
24 A. As it says in the memo, at this time staff do  
25 not have recommendations on using transient model

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1 simulation for determining curtailment date. So staff  
2 did not make a recommendation one way or the other.  
3 Q. So we can assume that the determination to use  
4 the transient model simulation was done sometime after  
5 December of 2022; correct?  
6 A. Well, the determination was not made by staff.  
7 The determination of whether or not to switch to  
8 transient modeling was made by the Director.  
9 Q. Would the Director have told the staff if he  
10 had determined that prior to December 23, 2022?  
11 A. I don't know when the Director made his  
12 decision. I know we provided this information that we  
13 provided to the technical working group to him, as well  
14 as the technical working group.  
15 Q. Do you know why the staff was not making a  
16 recommendation as of the date of this memo to use a  
17 transient model simulation for determining curtailment  
18 date?  
19 A. Yes.  
20 Q. What was the reason?  
21 A. Because, you know, the technical analysis is  
22 very straightforward. If you want to simulate a  
23 curtailment that will resolve -- if you want to simulate  
24 the type of curtailment that's prescribed in the  
25 methodology order which is a short-term curtailment,



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1 just for this irrigation season. You can only simulate  
2 that with a transient model simulation. You can't  
3 simulate that with a steady state model simulation. And  
4 the only way you can get to what will get to the reach  
5 during this irrigation season is to use a transient  
6 simulation.  
7 You cannot get that resolved with a steady  
8 state simulation. The technical part of that is very  
9 straightforward. The reason staff did not make a  
10 recommendation to the Director on what his decision  
11 would be is that the Director has to decide what the  
12 purpose of the curtailment is. And if the purpose of  
13 the curtailment is to get the water to the senior during  
14 the time of need, that irrigation season then the  
15 technical information shows that the transient analysis  
16 is the appropriate method to use.  
17 However, we didn't feel it was up to staff to  
18 make that legal conclusion that that is the purpose of  
19 the curtailment. That's a conclusion of law for the  
20 Director to make.  
21 Q. So was the purpose of curtailment in the  
22 Fourth Methodology Order and earlier, something  
23 different?  
24 A. Well, I mean, apparently Karl Dreher had a  
25 different interpretation of that, because he chose to

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1 use an analysis that did not result in getting water to  
2 the senior during the time of need.  
3 Q. How long has Director Spackman been the  
4 director; do you know?  
5 A. I don't know.  
6 Q. Has he been the director and been implementing  
7 any of the methodology orders to your knowledge?  
8 A. Well, certainly they've been implemented while  
9 he's been Director, yes.  
10 Q. And so the Fourth Methodology Order has been  
11 in place for how many years?  
12 A. I don't know.  
13 Q. Has Director Spackman been implementing the  
14 Fourth Methodology Order?  
15 A. Yes, he has.  
16 Q. And have you assisted him in doing that?  
17 A. I have done the steady state calculations that  
18 we were directed to do. Yes.  
19 Q. But the technical analysis as to whether  
20 steady state or transient model output is necessary, as  
21 you said is very straightforward. But that hasn't been  
22 done until this year?  
23 A. That's correct.  
24 Q. But nothing has changed as far as the model  
25 capability on doing that; correct?

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1 A. That's correct.  
2 Q. And nothing has changed in your understanding  
3 on what a transient output would provide; correct?  
4 A. In my understanding, that's correct. I mean,  
5 for myself, yes, my understanding of what an output  
6 transient has changed. I can not speak for other's  
7 understanding.  
8 Q. Right. So the only thing you can come up with  
9 is why there has been a change, is because the Director  
10 sees a different purpose for curtailment?  
11 A. Yes, I was -- I was told by Allan Wylie that  
12 Karl Dreher did not want to use a transient analysis,  
13 because he did not like the additional volume of water  
14 that would accrue to the reach in future years. I don't  
15 know if that -- again, that's hearsay, but that's my  
16 entire knowledge of why Allan explained to me, we were  
17 doing the steady state.  
18 Q. And I'm going to come back to that. But  
19 because I have to take a hard break here in about ten  
20 minutes. I just want to get one more exhibit Exhibit  
21 No. 5 which is the frequently asked questions that was  
22 from the Department's website, Dylan?  
23 MR. ANDERSON: Okay.  
24 MS. McHUGH: Is something happening.  
25 MR. ANDERSON: Yes. I'm looking for the

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1 frequently asked questions.  
2 MS. McHUGH: It's a three-page document and  
3 the north methodology Fifth Methodology Order as-applied  
4 and it says FAQs.  
5 MR. ANDERSON: I have it digitally.  
6 MS. McHUGH: You have it digitally, but you  
7 don't have it here on paper.  
8 MR. BUDGE: Candice, this is TJ. I'm looking  
9 through materials. It was supposed to be with the news  
10 release. But I don't have that. And so it looks to me  
11 like a few of the documents didn't make it with Dylan  
12 yesterday. So we have to copy that.  
13 MS. McHUGH: Can we take a 15, 20-minute break  
14 right now. And get a copy of that, and then I will just  
15 jump off here and do my 10:00 status conference, which  
16 really should only take five minutes, because we are  
17 just letting it out. So should we plan on coming back  
18 on like 10:10?  
19 MR. BAXTER: I can do that. Does that work  
20 for you guys?  
21 MR. ANDERSON: Yes.  
22 MR. BAXTER: We'll be back on at 10:10.  
23 (Recess.)  
24 Q. (BY MS. McHUGH) We're back on the record.  
25 Thank you for accommodating that a brief hiatus I

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1 needed.  
2 I think, Jennifer, you have been handed what's  
3 marked as [Exhibit 5](#).  
4 MR. BAXTER: Dylan is handing it to her right  
5 now.  
6 ([Exhibit 5](#) marked.)  
7 Q. (BY MS. McHUGH) Do you have [Exhibit 5](#) in  
8 front of you now, Jennifer?  
9 A. Yes.  
10 Q. Can you identify that document?  
11 A. It says "Surface Water Coalition Delivery Call  
12 Delivery Fifth Methodology and April 2023 As-Applied  
13 Orders, FAQs."  
14 Q. Have you seen that document before?  
15 A. No.  
16 Q. Has anybody told you about that document?  
17 A. No.  
18 Q. Okay. This is a document that I downloaded  
19 and printed from the Department's website that is under  
20 a link here. I wanted to have you look down at bullet  
21 No. 1. Why did IDWR change the methodology? Do you see  
22 that? Can you just review that answer?  
23 A. Okay.  
24 Q. Is the transient model analysis new  
25 information?

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1 A. New information to whom?  
2 Q. To the Department.  
3 A. To whom within the Department?  
4 Q. To the Director.  
5 A. It might be. I provided that to the Director  
6 at the same time I provided it to the technical working  
7 group. I don't know what the Director knew prior to,  
8 you know, last year.  
9 Q. I guess what I was asking is, the fact that  
10 the model is a transient model, is that new information  
11 to the Department?  
12 A. It's not new -- I mean, I don't know what the  
13 Director knew. But I -- it's not new information  
14 though. I guess we've used the transient modeling in  
15 previous. We used transient modeling in evaluation of  
16 the Rangen mitigation plan. So, no, it's not new  
17 information.  
18 Q. Wasn't ESPAM2.1 wasn't there a final report  
19 furnished?  
20 A. Yes.  
21 Q. And in that report does it talk about ESPAM2.1  
22 having half month time steps, and that is a transient  
23 model?  
24 A. Yes.  
25 Q. And that was published by the Department;

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1 right, that final report?  
2 A. I would have to look again. I don't recall.  
3 Q. Okay. We can re-visit that in a minute. And  
4 if you look to bullet point No. 3, it says, "Why did  
5 IDWR change the methodology to transient model?" Do you  
6 see that?  
7 A. Yes.  
8 Q. And could you read their answer?  
9 A. I'm sorry. Did you ask me to read the answer?  
10 Q. Just review the answer.  
11 A. Okay. Yeah, I did that early when you asked.  
12 Q. Okay. And it says that the Director has  
13 concluded that using the ESPA model in steady state mode  
14 is no longer legally supportable, because steady state  
15 does not provide water at the time, place, and quantity  
16 needed by the senior water user. Is that the answer?  
17 A. That is what this says, yes.  
18 Q. And what do you know about what legal  
19 information occurred between the Fourth Methodology  
20 Order and the Fifth Methodology Order that's changed?  
21 Do you know anything?  
22 MR. BAXTER: I'm going to object. It calls  
23 for legal conclusion with regard to the witness.  
24 But, Jennifer, go ahead and answer the  
25 question.

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1 THE WITNESS: I mean I am aware that there  
2 were some legal decisions issued I believe during that  
3 time frame, that provided some direction to the Director  
4 on, you know, providing water at the time, place, and  
5 quantity needed. But, you know, the specifics of that  
6 are like Garrick said, beyond the scope of my position.  
7 Q. (BY MS. McHUGH) And when you say you are  
8 aware of some legal decisions made during that time  
9 frame. What time frame are you referring to?  
10 A. During the 2010s, I guess. I don't know -- I  
11 don't recall specifically.  
12 MS. McHUGH: Okay. Can we hand her [Exhibit 6](#),  
13 which would be the PowerPoint presentation that she  
14 prepared for the technical working group?  
15 MR. BAXTER: All right. Dylan is digging that  
16 out.  
17 ([Exhibit 6](#) marked.)  
18 MR. BAXTER: All right. Jennifer has been  
19 handed the exhibit.  
20 Q. (BY MS. McHUGH) Okay. Jennifer, you've been  
21 handed what's been marked as [Exhibit 6](#). Can you  
22 identify that document for me?  
23 A. It's a presentation titled "Surface Water  
24 Coalition Methodology - Calculation of Priority Dates  
25 for Curtailment of Junior Ground Water Users."

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1 Q. And did you prepare that document?  
2 A. Sorry. You broke up during the question. Can  
3 you repeat it?  
4 Q. Sorry. Yeah. Did you prepare that document?  
5 A. Yes.  
6 Q. And when did you start working on that  
7 document; do you know?  
8 A. I don't recall.  
9 Q. And did you provide this document via a  
10 PowerPoint to the technical working group?  
11 A. I don't recall if I personally provided it. I  
12 think Matt Anders provided it to the technical working  
13 group.  
14 Q. Okay. Was it provided as a PowerPoint  
15 presentation, or was it just provided as a printout of a  
16 PowerPoint presentation?  
17 A. I believe it was provided electronically.  
18 Whether it was a PowerPoint or a PDF, I don't know.  
19 Q. Okay. But you prepared the entire  
20 presentation? That's all your work?  
21 A. Yes.  
22 Q. And it's dated November 28th, 2022. But that  
23 doesn't mean that that's the date that you actually  
24 presented it or it was provided to the technical working  
25 group? Am I understanding that correctly?

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1 A. I believe that's the date I presented it to  
2 the technical working group.  
3 Q. Okay. So you do recall that you presented it?  
4 A. Oh, I recall presenting it, yes.  
5 Q. Okay. Maybe my prior question wasn't clear.  
6 So you did present this to the technical working group?  
7 A. Yes. I'm sorry. I thought you were talking  
8 about providing the digital file to the technical  
9 working group.  
10 Q. Okay. Fair enough. But this PowerPoint, you  
11 presented to the technical working group?  
12 A. Yes.  
13 Q. Okay. And to be clear, on the second page of  
14 that, where it says methodology referenced. And it says  
15 off to the side page 36, the methodology, or page 38.  
16 Is that referring to the Fourth Methodology Order?  
17 A. Yes.  
18 Q. And I'm just scrolling down to the graph that  
19 I thought was here, but doesn't appear to be. So if you  
20 look at page 13 of that presentation, the title of the  
21 slide is "Comparison of Priority Dates Calculated For  
22 April DS Forecast (May 1 Curtailment)." Do you see  
23 that?  
24 A. Sorry. There is no page numbers in the  
25 exhibit here.

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1 Q. Yeah, I know because I didn't alter how it  
2 came out to you?  
3 A. Tell me again what the header is on the side  
4 that you want to talk about.  
5 Q. Yes. It's a graph. And it says, "Comparison  
6 of Priority Dates, calculated for April DA forecast (May  
7 1 curtailment)." The graph, itself, says "Shortfall  
8 volume and curtailed acres versus priority date for  
9 Surface Water Coalition call."  
10 A. Okay. I think I'm on that page.  
11 Q. Okay. And is this color for you?  
12 A. Yes.  
13 Q. And so can you describe for me what this graph  
14 is showing?  
15 A. Okay. So this graph is showing -- is that our  
16 message bar is running low.  
17 MR. BAXTER: Hold on real quick.  
18 (Off the record.)  
19 MS. McHUGH: It's slide 13 of 22 in the  
20 presentation.  
21 MR. BAXTER: We're good to go now. Sorry,  
22 Candice.  
23 Q. (BY MS. McHUGH) So, Jennifer, let's go back  
24 to that. Could you explain what this graph on this  
25 slide is showing?

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1 A. Yeah, so it's showing the shortfall volume and  
2 curtailed acres versus priority date for the Surface  
3 Water Coalition delivery call. So on the X axis, it's  
4 showing the water right priority date that is the date  
5 that everything junior to is curtailed. And then on the  
6 Y axis, it's showing the simulated value for acres  
7 curtailed, which is the blue line. And that is the same  
8 for both a steady state model simulation and a transient  
9 model simulation, because that's just the input to the  
10 MODFLOW model, or part of the input to the MODFLOW  
11 model.  
12 And the yellow line shows what would be the  
13 predicted response at the near Blackfoot to Minidoka  
14 reach at steady state, which would be if ground water  
15 use was curtailed to that same priority date, every year  
16 for an infinite number of years. So that's what the  
17 yellow line is showing.  
18 And then the red line is the predicted  
19 response at the near Blackfoot to Minidoka reach between  
20 May 1st and September 30th of the first year of the  
21 curtailment, which is what the curtailment prescribed by  
22 the methodology order allows for, is just a single year  
23 curtailment.  
24 Q. Okay. And just to clarify a few things to  
25 make the record clear. So when you talk about

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1 curtailment between May 1st and September 30th, what you  
2 are talking about is the non-pumping of ground water  
3 rights during that period of time; correct?  
4 A. Correct.  
5 Q. And it's the volume or acre-feet under those  
6 ground water rights that wouldn't be pumped between May  
7 1st and September 30th; correct?  
8 A. That volume is not shown on this graph. No,  
9 that's not correct.  
10 Q. Okay. But it's the input into the model is  
11 what?  
12 A. This graph doesn't show that. This graph  
13 shows the response at the near Blackfoot to Minidoka  
14 reach.  
15 Q. Okay. But the idea is is that during that May  
16 1st through September 30th date, that ground water is  
17 not being pumped during those months; correct?  
18 A. Yeah, ground water junior to the given date is  
19 not being pumped during those months, yes, that's  
20 correct?  
21 Q. And the given date is represented by the X  
22 axis?  
23 A. Correct.  
24 Q. Okay. And on the blue line and as it relates  
25 to the axis shows the number of acres curtailed. But

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1 there is also a volume that is shown by the Y axis. Can  
2 you explain that relationship?  
3 A. Yeah. So the volume is the response at near  
4 Blackfoot to Minidoka resulting from curtailing that  
5 many acres of ground water use junior to that given  
6 priority date.  
7 Q. Okay. And the near Blackfoot to Minidoka  
8 reach, I mean it's not on this graph, but I want to make  
9 the record clear. The near Blackfoot to Minidoka reach  
10 is important because why? Can you explain that?  
11 A. That has been the reach of the Snake River  
12 that has been identified as the source of supply that's  
13 relevant for the Surface Water Coalition delivery call.  
14 Q. Okay. And when you look at this graph, this  
15 year, do you recall the shortage that is predicted to  
16 Twin Falls Canal Company or roughly the shortage?  
17 A. 5200 -- I'm not sure just Twin Falls Canal  
18 Company the total in-season demand shortfall prediction  
19 was is 75,200 acre-feet. I don't recall if there was  
20 one or more entities that were part of that shortfall.  
21 Q. And just for using that as a number purpose.  
22 Just so we can talk about this graph, so I make sure I  
23 understand it. Where on this graph would 75,000  
24 acre-feet like roughly fall, as far as that volume goes  
25 under the three line?

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1 A. It would fall where 75,200 acre-feet would  
2 fall on the Y axis. So the first line here, we've got  
3 zero, and we've got 200,000 acre-feet. So it would be,  
4 you know, less than halfway -- it would be between the  
5 zero and 200,000 acre-feet, and less than halfway of.  
6 Q. Okay. And just for discussion purposes, is  
7 there a line or a dot on here that you can identify that  
8 you think represents 75,000 acre-feet roughly?  
9 A. Well, yeah I mean we -- we specifically  
10 calculated the curtailment date for the as-applied order  
11 using this same method. So the place it would fall on  
12 here would be December 30th, 1953, which would be  
13 between the January 1950 and January 1960 priority dates  
14 and closer to 1950, so...  
15 Q. So can we use the third dot over on the red  
16 line as an approximate that would be approximate, that  
17 would be approximately 75,000 acre-feet, and that  
18 correlates to the approximately 1953?  
19 A. It would be close. I would imagine it is  
20 probably January 1954 or January 1955. I don't recall  
21 which date I ran, but it's close.  
22 MR. BAXTER: Just for -- I'm sorry.  
23 Q. (BY MS. McHUGH) Okay.  
24 MR. BAXTER: Just for clarification on the  
25 record. You said third dot, third dot from which side

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1 Candice, left or right?  
2 MS. McHUGH: Third dot from the Y axis going  
3 across.  
4 MR. BAXTER: Thank you.  
5 Q. (BY MS. McHUGH) Is that where you were  
6 referring to Jennifer?  
7 A. Yeah.  
8 Q. On the red line?  
9 A. Yes.  
10 Q. And if you look at that location, and then you  
11 also and then look at the number of acres curtailed  
12 relative to getting that, you know, that priority date,  
13 which is currently under the curtailment order roughly,  
14 and the number of acres curtailed. The blue line shows  
15 the number of acres curtailed; would that be true?  
16 A. Yes.  
17 Q. Okay. And the quantity of water expected for  
18 that date is roughly the 75,000. And the number of  
19 acres curtailed if you were to draw just a straight line  
20 up, is roughly between 600 and 800,000 acres?  
21 A. Yes. And the files that were provided with  
22 the as-applied order, it was about 700,000 acres.  
23 Q. Okay. And if you look at the yellow line,  
24 which is the steady state response. Is there a dot, and  
25 this time we'll go from the right-hand page since that

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1 is maybe a little easier. Is there a yellow dot that is  
2 roughly the 75,000 acre-foot level on that? Do you see  
3 that?  
4 A. Yeah.  
5 Q. And by mine, I would count all the yellow dots  
6 from right to left as being maybe the ninth or tenth  
7 dot?  
8 A. Yeah, probably somewhere in there.  
9 Q. Okay. And if you look at that dot under the  
10 steady state response, the relationship between the  
11 75,000 acre-feet and the number of acres curtailed, that  
12 curtails roughly 75,000 acres is what it looks like  
13 predicted under this -- in this graph? Does that kind  
14 of -- the relationship is pretty close?  
15 A. Yeah, it would be in the ballpark.  
16 Q. Yeah. So it's safe to say that when you run a  
17 transient curtailment run, the number of acres curtailed  
18 to produce the same amount of water as would be produced  
19 under a steady state model run is significantly more?  
20 A. Yes.  
21 Q. In this case, it goes from roughly 75,000  
22 acres to 700,000 acres?  
23 A. Roughly, yes.  
24 Q. Were you asked to do any analysis on whether  
25 or not that was a reasonable amount of acres to be

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1 curtailed for that amount of water?  
2 MR. BAXTER: I'm going to object. It calls  
3 for a legal conclusion as to the reasonableness.  
4 But, Jennifer, go ahead and answer the  
5 question.  
6 THE WITNESS: No, I was not asked to do that.  
7 Q. (BY MS. McHUGH) Were there any discussions  
8 about that?  
9 MR. BAXTER: I'm going to object, Jennifer, to  
10 the extent the answer to the question would require you  
11 to divulge or disclose information regarding the  
12 Director's deliberative process on these legal issues as  
13 to legal and policy issues with regard to which action  
14 to choose in which to -- let me rephrase that as to  
15 steady state or transient analysis. I'm going to  
16 instruct you to not answer the question. But if there  
17 is information that you can relay that does not disclose  
18 the deliberative process, you are free to answer.  
19 THE WITNESS: Yeah, I don't have anything I  
20 can answer on that.  
21 Q. (BY MS. McHUGH) Is it because you don't know,  
22 or because it was considered part of the Director's  
23 deliberative process?  
24 A. Because it would be considered part of the  
25 deliberative process.

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1 MS. McHUGH: And, Garrick, as an FYI, you are  
2 very faint. And you weren't before, but are now, faint,  
3 as the FYI.  
4 MR. BAXTER: I will speak up closer.  
5 Q. (BY MS. McHUGH) Jennifer are you familiar  
6 with the concept of futile call?  
7 A. Yes.  
8 Q. Was there any discussion about whether or not  
9 using the transient model might impact analysis of  
10 futile call?  
11 MR. BAXTER: I'm going to object. Jennifer,  
12 again to the extent the answer to the question would  
13 require you to disclose information regarding the  
14 Director's deliberative process, specifically as to  
15 futile call and whether you implemented it.  
16 You are instructed not to answer the question.  
17 THE WITNESS: I don't think I had any  
18 discussions with anybody about futile call.  
19 Q. (BY MS. McHUGH) Do you know if anybody looked  
20 at this order and, for example, using the kind of  
21 information that is depicted on this graph, did any kind  
22 of reasonableness analysis and whether this made any  
23 sense?  
24 MR. BAXTER: Again, I'm going to object to the  
25 extent the question would require you to disclose

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1 information regarding the Director's deliberative  
2 process as to reasonableness, specifically here in this  
3 question, you are instructed not to answer the question.  
4 But if you can answer the question without disclosing  
5 the deliberative process, you can answer the question.  
6 THE WITNESS: Well, I mean, I can say that in  
7 this presentation, I talk about, you know, what happens  
8 with water that accrues during the future years. And I  
9 don't make any recommendations about how that should be  
10 considered in the legal or the policy decision. But I  
11 do outline the technical facts of, you know, what the  
12 implications are of going to the earlier priority date,  
13 when the water accrues, and what are the potential fates  
14 of water that accrues in future years during dry years  
15 and wet years. So that information was provided to the  
16 decision-makers to make the decision.  
17 Q. (BY MS. McHUGH) Okay. So let's look at the  
18 yellow line for a moment. We kind of discussed that  
19 about yellow dot No. 9 from the right-hand side is  
20 roughly 75,000 acre-feet of water that would be  
21 produced. Can you give an approximate priority date  
22 that that amount from the yellow line would correspond  
23 to?  
24 A. It would be in the mid-1980s.  
25 Q. And a curtailment in the mid-1980s does give

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1 some amount of water in the May 1st to September 30th  
2 time period; correct?  
3 A. Correct. Some water, yes.  
4 Q. Okay. Now, if you take the amount of water  
5 this year, for example, if you curtail back to roughly  
6 the 1953 priority date, and you do it for this May 1st  
7 to September 30th date, I'm going to get back to this  
8 comment you made about what you heard Karl Dreher's  
9 concern was, because I have a question about that. That  
10 what do you do with the additional water in future  
11 years?  
12 So if next year there is a demand shortfall of  
13 75,000 acre-feet, and you use a transient model run, how  
14 do you think that's going to work? Can you explain that  
15 process?  
16 A. It depends on, you know, what ends up  
17 happening this year. If there were no mitigation  
18 provided by any of the water users, and the curtailment  
19 actually occurred, then the benefits that accrue to the  
20 reach between the end of the season in April  
21 would offset the -- would reduce the shortfall  
22 prediction, because they would be realized in the  
23 variables they use to predict the shortfall. We would  
24 then have to account for water yet to accrue from last  
25 year's curtailment during this season. And that would

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1 work to reduce the curtailment date that would be  
2 required in the upcoming season. However, if all of the  
3 water users mitigate instead of being curtailed, then  
4 there is no benefit yet to accrue, you know, from  
5 mitigation by providing delivery of storage water. So  
6 then we would just be looking at a single year  
7 curtailment again.  
8 Q. Does the 1953 date in the order account for  
9 the accrual of water that has been re-charged to the  
10 aquifer benefiting the near Blackfoot to Minidoka reach  
11 that has been done by the municipalities?  
12 A. To the extent that it has accrued by April 1,  
13 yes.  
14 Q. And does it account for the recharge done by  
15 the Idaho Water Resource Board?  
16 A. Yes.  
17 Q. And does the 1953 priority date that's  
18 proposed in the current order for the upcoming season,  
19 does it account for the fact that some of that water is  
20 going to be accruing from past recharge activities  
21 during this irrigation season?  
22 A. No, it does not.  
23 Q. So those mitigation activities that are  
24 undertaken by the cities for recharge purposes, and the  
25 recharge that's done through the Idaho Water Resource

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1 Board, does have benefits that will accrue to the near  
2 Blackfoot to Minidoka reach this summer; correct?  
3 A. Yes.  
4 Q. And I believe under the ground water  
5 appropriators, they also do recharge, and that recharge  
6 is it expected to have benefit for this coming season  
7 for the near Blackfoot to Minidoka reach; correct?  
8 A. Possibly. A lot of that recharge accrues  
9 close enough to the river that I can't say without  
10 analyzing it whether or not there is still water yet to  
11 accrue to the reach.  
12 Q. But there has been no analysis of that; is  
13 that my understanding? You haven't done that analysis?  
14 A. No.  
15 Q. And the methodology order doesn't take that  
16 into account relative to the amount of water that's  
17 going to be available to Twin Falls or the Surface Water  
18 Coalition this season?  
19 A. It's really a question of whether or not the  
20 shortfall calculation takes into account -- takes that  
21 into account, because we're just calculating the  
22 priority date based on the shortfall. So you would have  
23 to look at whether or not the predictive variables they  
24 use to make the shortfall prediction include the impacts  
25 of that recharge or not. I think in a lot of cases,

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1 they do.  
2 Q. And who does that calculation?  
3 A. Matt Anders.  
4 Q. Looking back at this graph, we've established  
5 that the steady state response for providing  
6 approximately 75,000 acre-feet would include a  
7 curtailment of approximately 75,000 acres, and that  
8 priority date would be roughly in the mid-1980s.  
9 So if there was a curtailment of -- what would  
10 you expect to happen if there was just a permanent  
11 curtailment of, let's say, the mid-1980s. We'll pick a  
12 date to say, the mid-1980s, so a 1982 priority date.  
13 What would happen to the amount of water that would  
14 accrue to the near Blackfoot to Minidoka reach if the  
15 mid-1980s water rights were curtailed going forward?  
16 A. So you are saying the mid-1980 water rights  
17 would be curtailed every year in theory even though  
18 that's not what the methodology allows for?  
19 Q. Yes, I'm just trying to understand --  
20 A. You are just asking as a technical question.  
21 Q. -- what this graph would look like if that was  
22 going on.  
23 A. So if that occurred for decades continuously,  
24 then the annual average response would be similar to the  
25 steady state response, which would be the yellow line on

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1 here.  
2 Q. And if the junior ground water rights, if the  
3 mid-1980 ground water rights were never developed, like  
4 they didn't -- they just weren't developed, would that  
5 have the same impact to the near Blackfoot to Neeley  
6 reach? Would there be the roughly 75,000 acre-feet in  
7 that reach this year?  
8 A. Yes, that's what we would predict would have  
9 happened if those water rights had never -- if all the  
10 water rights junior to the mid-1980s had never been  
11 developed.  
12 Q. Do you know whether or not there is a  
13 transient run that shows monthly accruals to the near  
14 Blackfoot to Minidoka reach with the 1953 priority date?  
15 A. Yes.  
16 Q. And have those been provided?  
17 A. Yes.  
18 Q. And is that in an output file, or is that in a  
19 graph, or that could that be made into a graph?  
20 A. Well, it's both in the model output file  
21 format and in an Excel spreadsheet that was provided.  
22 Q. Okay. And if our consultant had a question on  
23 specifically where this is at, would you be able to  
24 point him to that exact file if for some reason we can't  
25 find it?

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1 A. Yes, it's in the -- yes, I can. Do you want  
2 me to tell you the location now?  
3 Q. Sure.  
4 A. Okay. So it's in like SWC April ESPAM zip  
5 folder, and there is a file, subdirectory that says  
6 Junior 12-30, 1953. And within that there should be an  
7 Excel -- well, there is one Excel spreadsheet for the  
8 city municipal users, and one Excel spreadsheet for the  
9 irrigation use, and then one that sums them together.  
10 Q. Okay. I wanted to go back to the question  
11 about what happens in consecutive years of transient  
12 curtailment? So if this year we curtail May 1st to  
13 September 30th, back to 1953. And then next year, there  
14 is a demand shortfall, let's say, the exact same, 75,000  
15 acre-feet. And maybe you explained this to me already  
16 but I need to understand it again. What would you  
17 expect next year to happen?  
18 A. I'm sorry. Repeat that. What would I expect  
19 to happen next year if what happens this year?  
20 Q. So I'm trying to understand what happens in  
21 consecutive years of transient curtailment. So this  
22 year, we curtail May 1st through September 30th. And we  
23 expect what's on this graph to occur. Next year, if  
24 there is a demand shortfall of 75,000 acre-feet again,  
25 and we expect the exact same time period to be

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1 curtailed, May 1st to September 30th. What would you  
2 expect to be the outcome for next year, a curtailment  
3 date, or is every year just a brand new date, or how do  
4 you account for this year's benefits next year? Does  
5 that make sense?  
6 A. Well, yeah. I guess what is happening this  
7 year with the curtailment, though? Is there mitigation  
8 provided --  
9 Q. Let's assume --  
10 A. -- or is it --  
11 Q. Let's assume no mitigation for the first  
12 answer.  
13 A. Okay. So that would be the same answer I gave  
14 you before. We would need to -- if all of the junior  
15 ground water users are actually curtailed, we would need  
16 to set up next year's simulation so that there would be,  
17 you know, the simulation would start with this  
18 curtailment. We would simulate that stress. And what  
19 would be accruing between May 1 and September 30th based  
20 on the year before, would be part of the benefit that  
21 would accrue from, you know, curtailment into this  
22 season. Whatever accrued prior to, you know, prior  
23 to -- well, and I guess I should say, April 1. So  
24 whatever accrued prior to April 1 would be the benefits  
25 of that would be included in the predictive variables

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1 for the calculation of the shortfall volume. So as I  
2 stated in the presentation, it would reduce the  
3 shortfall volume. So what that means is if the  
4 shortfall volume ends up being 75,000 acre-feet, it  
5 would have been larger without the previous year's  
6 curtailment.  
7 Q. So would that require a change in how the  
8 supply side, the supply available to the Minidoka reach  
9 is calculated?  
10 A. No.  
11 Q. It would just require a change in the input  
12 and the variables to that prediction equation?  
13 A. No, I'm saying that it would affect those  
14 variables physically. So they would be different than  
15 they would have been otherwise.  
16 Q. So in your opinion, the way that the demand  
17 shortfall is currently calculated and proposed to be  
18 calculated in the Fifth Amended Methodology Order allows  
19 for the variables to be changed next year based on this  
20 year's transient curtailment?  
21 A. Well, what I'm saying is, if there were a  
22 transient curtailment this year, then that would be  
23 realized in water that accrues to storage over the  
24 winter it would be realized in discharge at Box Canyon  
25 Spring. It would be realized at the water level in a

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1 well that they look at to make the prediction. So those  
2 values would all be higher. So it would be inherent in  
3 their prediction, because the data they use will have  
4 changed in response to the curtailment.  
5 Q. Okay. That was helpful. Do you understand  
6 what the 75,000 acre-foot quantity is predicting, and  
7 can you explain that?  
8 A. Well, it's predicting their demand shortfall.  
9 So it's predicting what the difference will be between  
10 their -- what the difference is between their predicted  
11 supply and their predicted demand.  
12 Q. And who gave you that number to input into the  
13 model in order to analyze the priority date?  
14 A. Matt Anders.  
15 Q. I'm just looking through your presentation to  
16 see if I have any other questions. Just one second. Do  
17 you have an understanding of the amount of water that  
18 would accrue to the near Blackfoot to Minidoka reach if  
19 there were no ground water pumping?  
20 A. Yes, we use the model to estimate that.  
21 Q. And do you remember what that number is?  
22 A. It would be close to on the chart we were  
23 previously looking at, that would show you what the  
24 estimate is using the ESPAM2.2 data set. We only go  
25 back to the priority date in 1900 on this graph. So

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1 that's not quite all of the ground water use. There is  
2 a little bit junior or senior to 1900. But that would  
3 get you in the ballpark, because there is not a lot  
4 senior to 1900. So you would be looking at that yellow  
5 dot.  
6 Q. The yellow dot that's close to the 1900 range,  
7 is that what you are telling me?  
8 A. Right. So it would be over a million  
9 acre-feet per year.  
10 Q. Okay. So if there were no ground water  
11 pumping, it's your understanding the amount of water  
12 that would accrue to the near Blackfoot to Minidoka  
13 reach would be a million acre-feet?  
14 A. Approximately, yes.  
15 Q. So if I look at the transient line, and I'm  
16 going from left to right again. And it is kind of a  
17 straight line from 1900 to approximately, it would  
18 appear to be like 1949. What is that telling us?  
19 A. Well, the line is dashed because I did not  
20 model any dates between 1900 and January 1, 1949.  
21 Q. Uh-huh.  
22 A. So it would not necessarily be a straight line  
23 if we model dates in between. That just wasn't done as  
24 part of this analysis.  
25 Q. Okay. So are you saying that that's like

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1 a -- is it an unknown?  
2 A. Yes, we have not calculated those values for  
3 the dates in between 1900 and 1949. It could be  
4 calculated, but we have not done it.  
5 Q. Okay.  
6 A. So the only data points you can rely on in  
7 this graph is the dots. The dashed line in between is  
8 just to help you visually.  
9 Q. I see. I see.  
10 A. Yeah.  
11 MS. McHUGH: Okay. Can I take a break, and I  
12 would like to just confer with kind of the ground water  
13 user attorneys. And I will just call them on the phone  
14 I think, do a conference call real quick. And then we  
15 can reconvene here. So can we have just like a  
16 five-minute break just to have a conferral.  
17 MR. BAXTER: I have 11:05 right now. So 11:10  
18 be back?  
19 MS. McHUGH: Yes.  
20 (Recess.)  
21 MS. McHUGH: We are back on the record. Can  
22 we go back on the record?  
23 MR. BAXTER: Colleen is nodding her head.  
24 Q. (BY MS. McHUGH) Okay. We're back on the  
25 record, Jennifer. And I just wanted to explore a little

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1 bit about the time frame between the staff memo, dated  
2 December 23rd, 2022 and the April 21st, 2023, Fifth  
3 Amended Methodology Order. And I just need to be clear  
4 on your answers. So when did you become aware in that  
5 time period that the Director was going to amend the  
6 Fourth Methodology Order?  
7 A. I'm sorry. You lost me there.  
8 Q. Okay.  
9 A. What staff memo are you talking about?  
10 Q. The December 23rd, 2022 staff memo that had  
11 the recommendations from the technical working group?  
12 A. So that was one of the exhibits.  
13 Q. Yes, that is [Exhibit No. 4](#).  
14 A. Okay.  
15 Q. The time period between [Exhibit No. 4](#) and  
16 [Exhibit No. 1](#).  
17 A. Okay.  
18 Q. What I'm asking is, when did you become aware  
19 that the Director was going to amend the Fourth  
20 Methodology Order, and then come up with a Fifth  
21 Methodology Order?  
22 MR. BAXTER: I'm going to object to the  
23 question. It is attempting to get to the Director's  
24 deliberative process as to modification of the  
25 methodology order.



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1 So, Jennifer, to the extent your answer would  
2 reveal discussions related to that deliberative process,  
3 you are instructed not to answer the question. If you  
4 are aware of communications outside of internal  
5 deliberative processes, you are free to answer the  
6 question as to those publicly available discussions.  
7 THE WITNESS: Yeah, I mean, I'm not aware of  
8 anything other than what's outlined in the first  
9 paragraph of this memo. And then actually, I was not  
10 even aware of -- I was not even aware of the dates that  
11 were listed in this memo. It says that in a status  
12 conference on August 5th, 2022, the Director issued a  
13 directive to convene a committee of experts to review  
14 and provide comments on potential technical changes to  
15 the Fourth Amended Final Order Regarding Methodology.  
16 So that's the extent of my awareness of the timing of  
17 the Director's intent is what's outlined here.  
18 Q. (BY MS. McHUGH) And between the December  
19 23rd, 2022 memo and the issuance of the Fifth  
20 Methodology Order, on April 21st, 2023, were you aware  
21 of any meetings that occurred within the Department to  
22 amend the Fourth Methodology Order?  
23 A. Not that I can discuss.  
24 Q. Not that you can discuss. But were you aware  
25 that there were meetings?

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1 A. Garrick already directed me not to answer that  
2 question.  
3 Q. Okay. I'm going to ask you questions about  
4 these meetings on who was in the meeting. Was Mat  
5 Weaver in those meetings; do you know?  
6 MR. BAXTER: Again, to the extent the answer  
7 of the question would require you to disclose  
8 information regarding the Director's deliberative  
9 process on legal or policy issues, including the  
10 changing of the methodology order, and that includes  
11 discussions of IDWR staff, Jennifer, you are instructed  
12 to not answer the question. If you cannot answer the  
13 question, you can respond that way.  
14 THE WITNESS: Yeah, I've been directed not to  
15 answer the question.  
16 Q. (BY MS. McHUGH) Okay. Was Shelley Keen in  
17 those meetings?  
18 A. I've been directed not to answer that  
19 question.  
20 Q. What about Tim Luke?  
21 A. I've been directed not to answer that  
22 question.  
23 Q. What about Brian Patton?  
24 A. I've been directed not to answer that  
25 question.

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1 Q. What about any meetings with the Idaho Water  
2 Resource Board?  
3 A. I've been directed not to answer that  
4 question.  
5 Q. Is the Idaho Water Resource Board part of the  
6 Director's deliberative process?  
7 MR. BAXTER: Just a second here. Let me think  
8 this through for a minute. I'm going to instruct you,  
9 Jennifer, to go ahead and answer the question.  
10 THE WITNESS: Okay. I'm not aware of any  
11 discussions with the Idaho Water Resource Board relative  
12 to the Fifth Methodology Order.  
13 Q. (BY MS. McHUGH) Any of the Idaho Water  
14 Resource Board members?  
15 A. Not that I am aware of.  
16 Q. In your opinion, Jennifer, is it fair that the  
17 ground water users who are subject to the curtailment  
18 under an Amended Fifth Methodology Order for them to not  
19 be able to even know if there has been meetings, let  
20 alone who is in the meetings, do you think it's a fair  
21 process?  
22 A. It's a legal process. I don't think fairness  
23 is usually considered.  
24 Q. So in your mind, the Director's deliberative  
25 process is a legal process?

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1 A. That's my understanding.  
2 Q. Do you understand why the Director's  
3 deliberative process is not allowed to be discussed with  
4 the water users?  
5 MR. BAXTER: I'm going to object. It calls  
6 for a legal conclusion based on the witness' answers.  
7 But, Jennifer, to the extent you know the  
8 answer, you can answer it.  
9 THE WITNESS: Yeah, I don't know.  
10 MS. McHUGH: And, Garrick, if I understand  
11 what you are saying. Are you asserting a privilege?  
12 MR. BAXTER: No. You asked her for a legal  
13 conclusion.  
14 MS. McHUGH: I'm asking you, Garrick, are you  
15 asserting a privilege as to why she can't answer whether  
16 or not there has been any meetings that occurred between  
17 December 23rd, 2022 and April 21st, 2023 regarding  
18 amending the methodology order?  
19 MR. BAXTER: So if I'm understanding it  
20 correctly, Candice, you are asking me that same question  
21 you started with twice, and asking whether or not we're  
22 making an argument about a deliberative process  
23 privilege? Is that your question?  
24 MS. McHUGH: I'm asking you if you are  
25 asserting a privilege.

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1 MR. BAXTER: Again, the Director's orders  
2 speak for itself.  
3 MS. McHUGH: Okay.  
4 Q. (BY MS. McHUGH) So back to my question to  
5 you, Jennifer. Is it your understanding that the  
6 deliberative process at the Department is not to be  
7 disclosed to the ground water users?  
8 A. I think as Garrick said, the Director's order  
9 says that I'm not supposed to answer questions about  
10 that in this deposition.  
11 Q. And it's your understanding that you are not  
12 even allowed to answer questions as to whether the  
13 process occurred?  
14 MR. BAXTER: Candice, I'm going to object to  
15 the question here. I believe you are getting  
16 argumentative with regards to this particular issue.  
17 You've asked the question. She has answered the  
18 question.  
19 But to the extent you can answer the question  
20 that was just asked, Jennifer, please go ahead and  
21 answer it.  
22 Q. (BY MS. McHUGH) Maybe one last try, and then  
23 maybe I'll move on. So, Jennifer, were you part of the  
24 Director's deliberative process?  
25 MR. BAXTER: Candice, I'm going to object to

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1 that to the extent the answer requires a discussion of  
2 who participated in the Director's deliberative process,  
3 I believe that is addressed by the Director's order,  
4 saying that he is not going to allow questions with  
5 regards to his deliberative process. Asking who  
6 participated in that discussion is directly in  
7 contravention of the Director's order. So I'm going to  
8 instruct the witness not to answer the question.  
9 MS. McHUGH: Okay. Well, Jennifer, I think  
10 that's all the questions I have for you today. I know  
11 that other attorneys for other users do have questions,  
12 so I will sign off. I mean, I will still participate,  
13 but I'll be done for now.  
14 MR. BUDGE: Garrick, this is TJ. I'm going to  
15 ask questions of the deponent next. But I do have one  
16 housekeeping matter and would ask that we go off the  
17 record for a moment.  
18 MR. BAXTER: Colleen just nodded her head.  
19 We're off the record.  
20 (Off the record.)  
21 MR. BAXTER: We're back on the record.  
22 EXAMINATION  
23 QUESTIONS BY MR. BUDGE:  
24 Q. Hi, Jennifer. I'm TJ Budge. I represent the  
25 Idaho Ground Water Appropriators. They are commonly

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1 known by their acronym IGWA, or IG-WA. And we've met  
2 before, and it's good to see you here. I appreciate you  
3 being here.  
4 I am going to ask you a number of questions.  
5 And many of the topics that I had planned to ask you  
6 about, Ms. McHugh has already asked you questions. So I  
7 am going to do my best not to duplicate questions that  
8 she has asked. But there is some that will seem  
9 similar, because I want to clarify the record and make  
10 sure I understood your answers properly. Okay?  
11 A. Okay.  
12 MR. BUDGE: Garrick, just for you, just to  
13 follow up on the last exchange you had with Candice.  
14 Your instruction to Jennifer not to answer questions is  
15 based on the Director's order, not based on the  
16 assertion of an independent privilege; correct?  
17 MR. BAXTER: TJ, the order speaks for itself.  
18 MR. BUDGE: But your instruction not to answer  
19 questions, are you relying upon the order, or are you  
20 asserting an independent privilege?  
21 MR. BAXTER: TJ, I indicated that we were  
22 relying upon the Director's order, and the Director's  
23 authority there.  
24 MR. BUDGE: Okay. Thanks, Garrick. I just  
25 wanted to confirm that. That's what I understood. I

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1 appreciate that.  
2 Q. (BY MR. BUDGE) Jennifer, if you would please  
3 pull out Deposition [Exhibit 1](#), that's the Notice of  
4 Deposition. And once you have that, you can turn to  
5 page 3. If you look at the top of page 3, there is a  
6 definition of "document." It's really long. So I'm not  
7 going to ask you to read it carefully. But if you just  
8 skim through it, you'll see that it includes essentially  
9 every type of written communication, whether it's paper  
10 or digital. And I just want you to understand that my  
11 next couple of questions, when I refer to "document,"  
12 I'm using that broad definition.  
13 There was some questioning early on in your  
14 deposition related to this Notice about what documents  
15 you had brought, and what you had considered. And I  
16 just want to make sure that the record is clear.  
17 Jennifer, did you provide to Matt Anders any  
18 documents relating to the Fifth Methodology Order or the  
19 April 2023 As-Applied Order that was not yet uploaded to  
20 the Department's website?  
21 A. To Matt Anders, not that I recall, no.  
22 Q. Okay. Thank you. Did you provide to Mat  
23 Weaver any documents relating to the Fifth Methodology  
24 Order or the April 2023 As-Applied Order that have not  
25 been uploaded to the Department's website?

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1 MR. BAXTER: I'm going to object to the scope  
2 of the question. Documents that have been provided to  
3 IDWR staff that have not been identified to testify in  
4 this particular matter, I think are outside the scope of  
5 proceeding here. And it goes to specifically the  
6 Director's deliberative process in which he identified  
7 at our last status conference that he does rely upon  
8 IDWR's staff to help and assist him in this matter.  
9 And so because that question goes to  
10 communications that ultimately result in the Director's  
11 deliberative process, Jennifer, I'm going to instruct  
12 you not to answer that question.  
13 Q. (BY MR. BUDGE) Jennifer, did you provide to  
14 the Director any documents relating to the Fifth  
15 Methodology Order, or the April 2023 As-Applied Order  
16 that have not been uploaded to the Department's website?  
17 THE WITNESS: Do you want me to answer it?  
18 MR. BAXTER: Yes.  
19 THE WITNESS: Okay. I mean, you say documents  
20 including emails. I think I had some email  
21 correspondence that he was included on.  
22 Q. (BY MR. BUDGE) Anything other than email  
23 correspondence?  
24 A. No.  
25 Q. Jennifer, did you have any conversations with

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1 Matt Anders related to the Fifth Methodology Order or  
2 the April 2023 As-Applied Order?  
3 A. I'm sorry. Did I have what?  
4 Q. Did you have any conversations with Matt  
5 Anders related to the Fifth Methodology Order or the  
6 April 2023 As-Applied Order?  
7 MR. BAXTER: And, Jennifer, to the extent an  
8 answer to that would reveal communications related to  
9 the Director's deliberative process, I'm going to  
10 instruct you to not answer the question. But to the  
11 extent you can talk about factual issues in which you  
12 participated in related to the issues you've been  
13 identified to testify here today about, the steady state  
14 and transient modeling, the calculation of curtailment  
15 priority dates, you can answer that question.  
16 THE WITNESS: So, yes, I provided him the  
17 technical presentation that is [Exhibit 6](#). So that he  
18 could disperse that to the technical working group. I  
19 also, prior to the issuance of the as-applied order, he  
20 sent me the shortfall demand volume. And I reported  
21 back the curtailment date that I calculated when that  
22 work was completed.  
23 Q. (BY MR. BUDGE) Are those the only  
24 conversations you had with Matt Anders about the  
25 methodology order or the as-applied order?

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1 A. They would be the only conversations that  
2 would not fall under the deliberative process.  
3 Q. So you are declining to identify other  
4 conversations you've had with Matt Anders based on your  
5 counsel's instruction?  
6 A. Yes.  
7 Q. Okay. And have you had conversations with Mat  
8 Weaver relating to the Fifth Methodology Order or the  
9 April 2023 As-Applied Order?  
10 MR. BAXTER: Jennifer, to the extent your  
11 answer would require you to disclose information  
12 regarding the Director's deliberative process,  
13 specifically information you've shared with Mat Weaver  
14 that ultimately might have become part of the Director's  
15 deliberative process, you are instructed not to answer  
16 the question. If there are communications not related  
17 to the deliberative process, you can answer the  
18 question.  
19 THE WITNESS: Yeah, I don't -- I can't think  
20 of anything I can share with you that would not be  
21 considered part of the deliberative process.  
22 Q. (BY MR. BUDGE) Okay. And I may ask you other  
23 questions that you can't answer. It's not necessary  
24 that Garrick repeat his instructions. So if there is  
25 any questions I ask that you are just unable to answer.

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1 If you would please answer that you are not able to  
2 answer that question based on the instruction of  
3 counsel, we'll understand the basis for your refusal.  
4 Jennifer, did you have any conversations with  
5 the Director about the Fifth Methodology Order or the  
6 April 2023 As-Applied Order?  
7 A. I'm unable to answer that based on  
8 instructions of counsel.  
9 Q. Okay. And did you participate in any meetings  
10 involving Mat Weaver, or meetings with Mat Weaver or the  
11 Director involving the Fifth Methodology Order or the  
12 April 2023 As-Applied Order?  
13 A. I'm unable to answer that on the instruction  
14 of counsel.  
15 Q. Okay. Thank you. Jennifer, I'm going to  
16 switch gears to the Fourth Methodology Order. Did you  
17 contribute in any way to the development of the Fourth  
18 Methodology Order?  
19 A. Not that I recall, no.  
20 Q. Okay. You mentioned earlier that when Matt  
21 Anders advised you that Department staff were going to  
22 begin reviewing the Fourth Methodology Order, that you  
23 were given a list of issues that staff were considering.  
24 Do you recall that discussion?  
25 A. Yeah, I believe I said that I was aware there

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1 was a list of issues. And that I was told that the  
2 steady state versus the transient modeling issue was one  
3 of the issues that had been identified. And that that  
4 issue was assigned to me.  
5 Q. Got you. Do you recall seeing a document, an  
6 internal document of the Department that identified the  
7 issues that would be considered?  
8 A. No, I don't recall seeing a list.  
9 Q. And I believe you said that Matt Anders is the  
10 person that communicated to you that you would be  
11 assigned the transient state versus steady state issue?  
12 A. Yes.  
13 Q. Do you recall what month that was communicated  
14 to you?  
15 A. No.  
16 Q. Earlier, and you can review this, Deposition  
17 [Exhibit 4](#), which is what I call the preliminary  
18 recommendations of Department staff. That first  
19 sentence, which you noted refers to a status conference  
20 on August 5th of 2022. Do you recall whether Matt  
21 Anders asked you or assigned you to review the steady  
22 state versus transient state issue before or after  
23 August 5th?  
24 A. I'm pretty sure it was after August 5th.  
25 Q. Okay. And when did you begin your analysis in

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1 that regard?  
2 A. I don't recall exactly when I began it.  
3 Q. Just the best of your recollection?  
4 A. Sometime in the fall of 2022.  
5 Q. Okay. Sometime between August 5th and your  
6 presentation of the technical working group on November  
7 28th, I guess?  
8 A. Yeah, and I -- yeah. I don't think it  
9 was -- I don't think I began it in August. I think it  
10 was sometime in the fall.  
11 Q. Did you do any modeling work related to the  
12 Fifth Methodology Order or the April 2023 As-Applied  
13 Order, after December 23rd, 2022?  
14 A. Can you repeat the question?  
15 Q. Yes. After what I call the preliminary  
16 recommendations of staff, after that was issued on  
17 December 23rd of last year, did you do any modeling work  
18 after that date related to the Fifth Methodology Order  
19 or the April 2023 As-Applied Order?  
20 A. Well, there is two separate documents there.  
21 Related to the Fifth Methodology Order order, no, I did  
22 not do any more technical analysis for the Fifth  
23 Methodology Order. For the April 2023 applied order, I  
24 obviously did technical analyses, because we did not  
25 know the shortfall volume until, you know, the first

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1 week of April. So, obviously, I'm doing that technical  
2 analysis during that time frame.  
3 Q. Okay. Thanks. Did you do anything related to  
4 the April 2023 order, other than identify the  
5 curtailment date needed to produce the demand shortfall  
6 volume?  
7 A. Yeah, just work I needed to do that,  
8 including, you know, updating some of the input data,  
9 the POD file, and the municipal diversions that are used  
10 in the analysis.  
11 Q. Did you review the comments that Sophia  
12 Sigstedt and Greg Sullivan submitted to Matt Anders on  
13 January 16th of 2023 in response to the staff  
14 recommendation issued December 23rd of 2022?  
15 A. The portion that related to the transient  
16 modeling, yes.  
17 Q. And in response to those comments, did you  
18 have further discussions with Matt Anders concerning  
19 those comments?  
20 A. To my recollection, there were not any  
21 comments on the technical method. I don't recall Greg  
22 Sullivan commenting on that issue. I recall Sophia  
23 reiterated some of the technical information I  
24 presented, and then commented that it would be a big  
25 change for the ground water users, which is also, you

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1 know, consistent with the information that was presented  
2 to the technical working group. But there were not any  
3 comments on the technical methods I was using to do the  
4 transient calculation.  
5 Q. Do you know if any Department staff members  
6 prepared any type of documents for use by the Director  
7 based on the feedback that Sophia Sigstedt and Greg  
8 Sullivan provided in their January 16th comments?  
9 MR. BAXTER: TJ, could you restate your  
10 question?  
11 Q. (BY MR. BUDGE) Yeah, let me ask it this way.  
12 How were the comments that Sophia and Greg considered on  
13 January 16th, how are those considered in the  
14 Department?  
15 MR. BAXTER: Jennifer, to extent that the  
16 answer to the question would require you to disclose  
17 information regarding the Director's deliberative  
18 process and how he how he evaluated the information that  
19 was provided, you are instructed not to answer the  
20 question. The Director's conclusions are listed in the  
21 methodology order, and they speak for themselves.  
22 THE WITNESS: Okay.  
23 MR. BAXTER: To the extent that there are  
24 communications that are not related to the deliberative  
25 process that have been made public, you are free to

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1 answer the question.  
2 THE WITNESS: Yeah, I mean, I can only speak  
3 for myself. And as I already stated, I reviewed the  
4 comments that were submitted, and did not see any  
5 comments about the technical method that I outlined for  
6 doing the transient analysis. So for my piece of it, I  
7 did not see any technical recommendations that needed to  
8 be addressed, and I did not work on any of the other  
9 issues that were addressed in [Exhibit 4](#), so I can't  
10 speak to those.  
11 Q. (BY MR. BUDGE) Were you involved in any  
12 meetings with the other Department staff members, where  
13 the comments of Sophia or Greg Sullivan were reviewed?  
14 A. I think I'm unable to answer that based on the  
15 instruction of counsel.  
16 Q. Okay. Were you involved in any way in  
17 reviewing the forecast supply component of the Fourth  
18 Methodology Order?  
19 A. No.  
20 Q. I want to follow up on a dialog you had with  
21 Ms. McHugh relating to the effect of a curtailment in  
22 future years under the Fifth Methodology Order. My  
23 understanding is that this Fifth Methodology Order's use  
24 of a transient state model will show how much of the  
25 curtailed water will accrue to the target reach near

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1 Blackfoot to Minidoka or Neeley in each successive water  
2 year; is that correct?  
3 A. The model output outputs -- yeah, I mean, it  
4 outputs time series data for as long a period as you  
5 program it to do.  
6 Q. Maybe to help me ask this question. If you'll  
7 turn to Deposition [Exhibit 6](#). That's your presentation  
8 to the technical group in November.  
9 A. Sorry. Which page?  
10 MR. BAXTER: I think he said page 6.  
11 Q. (BY MR. BUDGE) It's Deposition [Exhibit 6](#), but  
12 it's got a bar page that looks like this, if you can see  
13 that. Did you prepare that bar chart, Jennifer?  
14 A. Yes, I did.  
15 Q. And can you explain what that shows?  
16 A. It shows the predicted response to a May 1  
17 curtailment of water rights junior to October 11th, 1900  
18 at or near Blackfoot to Minidoka reach. And I've  
19 summarized it by different time periods. So the first  
20 bar shows the volume that would accrue between May and  
21 September of the same water year is the curtailment.  
22 And then the second bar shows the volume that would  
23 accrue during the next water year. The third bar is the  
24 third water year. And then the water year after that,  
25 and so on and so forth. And a water year is October

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1 through September.  
2 Q. Okay. I understood from your conversation  
3 with Ms. McHugh that a portion of the accruals in future  
4 water years may be realized in the measurements that go  
5 into predicting the forecast supply, such as Box Canyon,  
6 and others you've mentioned; is that right?  
7 A. Yes.  
8 Q. Based on your understanding of the forecast  
9 supply, does it account for accruals that would happen,  
10 you know, after April 1?  
11 A. No, I don't think it would.  
12 Q. Okay. Did you have any involvement in  
13 reviewing the acreage component of the Fourth  
14 Methodology Order?  
15 A. No.  
16 Q. Did you have any involvement in reviewing the  
17 baseline year component of the Fourth Methodology Order?  
18 A. No.  
19 Q. Did you have any involvement in reviewing the  
20 crop water need component of the Fourth Methodology  
21 Order?  
22 A. No.  
23 Q. And did you have any involvement involving the  
24 project efficiency component of the Fourth Methodology  
25 Order?

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1 A. No.  
2 MR. BUDGE: Okay. Can we go off the record  
3 for a moment?  
4 MR. BAXTER: Colleen, is nodding her head yes.  
5 (Lunch recess.)  
6 MR. BUDGE: Back on the record.  
7 Q. (BY MR. BUDGE) Jennifer, welcome back. I  
8 want to just continue with the deposition. And ask you  
9 to explain to me how the ESPA model works once you are  
10 given a demand shortfall number. For example, this  
11 spring you were given a demand shortfall model of 75,200  
12 acre-feet. Can you explain how the model then predicts  
13 how much curtailment is needed to offset that dimension  
14 or fall?  
15 A. I can explain the process which involves both  
16 the ESPAM model and some pre-processing software that we  
17 use. We're using the methods that were documented in  
18 the curtailment scenarios that have been published with  
19 every version of the model. And for this delivery call  
20 we clip everything to the area of common ground water.  
21 We have a point of diversion file that has points of  
22 diversions for all of the water rights with their  
23 priority dates, and the locations of the PODs, and the  
24 authorized irrigation rate that's associated with each  
25 water right, divided by the number of PODs. That's one

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1 of our inputs. Another input is the most recent  
2 delineation of irrigated lands.  
3 Those files are input into the curtailment IAR  
4 tool, which is published as part of the ESPAM2 recharge  
5 tools that are available online. And that does a  
6 computation that determines the number of junior  
7 irrigated acres in each model cell junior to a  
8 curtailment date that you input into the tool.  
9 And then that writes out a file with junior  
10 acres by model cell. That file is then put into the  
11 preprocessing program called Make MOD, which then takes  
12 that input file and input files with ET and  
13 precipitation, and calculates consumptive use by model  
14 cell associated with those junior ground water rights.  
15 And then that writes an input file that goes into the  
16 module ESPAM model. So Make MOD writes what we call the  
17 well file or the stress file that goes into the ESPAM  
18 model. And then we run that input model through the  
19 MODFLOW model, and that gives us an output of response  
20 at the near Blackfoot to Minidoka reach over time.  
21 And so I've run, from what I presented to the  
22 technical working group, that chart we talked about,  
23 you'll see that I've run various number of dates over  
24 time, priority dates over time. So I have that as a  
25 starting point. And I can say, okay. We need to look

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1 in between these dates. And it's just an iterative  
2 process where I start with a best guess for a date in  
3 between. And then if that results in more water than  
4 the demand shortfall in the time frame we're looking at,  
5 I, you know, change the priority date accordingly to a  
6 later date. If it doesn't result in enough, then I  
7 change it to an earlier date.  
8 And then there is also a process for the  
9 municipal water rights that was outlined in a staff memo  
10 for related to the Rangen delivery call. And we used  
11 that process to calculate the estimated benefit of  
12 curtailing municipal water rights, along with updated  
13 five-year average diversion data, annual volume  
14 diversion data from what's submitted into IDWR's water  
15 measurement information system.  
16 Q. You did a nice job of explaining that in a way  
17 that even I could kind of follow. So how many different  
18 data sets go into then generating the curtailment  
19 scenario? Can you just summarize those again? We had  
20 the irrigated lands and some --  
21 A. The irrigated lands, the point of diversion  
22 file, a ten-year average evapotranspiration on ground  
23 water irrigated lands, ten-year average precipitation on  
24 irrigated lands. And for the municipal, it's a  
25 five-year average of their diversion data.

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1 Q. Are these data sets being updated annually  
2 just as a matter of course?  
3 A. The POD file and the municipal diversions are  
4 updated annually. The other data sets are not updated  
5 on an annual basis.  
6 Q. Is it on an as-needed basis or just less  
7 frequent intervals?  
8 A. Less frequent intervals.  
9 Q. Can you just tell me the intervals that are  
10 used for the other data sets?  
11 A. On the irrigated lands, we're using whatever  
12 the most recent data set we have is. And that  
13 just -- you know, that interval just varies on when  
14 those data sets are completed. At this point the most  
15 recent data set we have is 2017 that's been completed.  
16 The ten-year average evapotranspiration and  
17 precipitation have just only been updated. It's the  
18 last ten years of the model calibration period. So for  
19 ESPAM2.2, it's currently a ten-year average of water  
20 year, 2009 to 2018. It was an earlier interval for  
21 ESPAM2.1. And it was something different than that for  
22 ESPAM1.1. I don't recall what it was.  
23 Q. Is the irrigated lands data set, is that a GIS  
24 shapefile?  
25 A. The version I use is a raster that was made

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1 from a GIS shapefile.  
2 Q. And how was that created?  
3 A. It's created -- that was created by our GIS  
4 staff that digitized field boundaries, and manually  
5 reviewed satellite imagery, and aerial photography, and  
6 possibly some other data sources to then delineate the  
7 status of each within each field boundary of whether it  
8 was irrigated or non-irrigated or semi-irrigated.  
9 Q. And they do this within the entire ESPA?  
10 A. Yes, they do it for an area slightly larger  
11 than the ESPA.  
12 Q. Do they do this for surface water irrigated  
13 lands as well?  
14 A. They do not distinguish between surface water  
15 and ground water irrigated lands. It's just whether or  
16 not they are irrigated. So it includes both surface  
17 water and ground water irrigated lands.  
18 Q. And then how do you separate those apart for  
19 modeling purposes, or does someone else do that?  
20 A. In the model input files, we have what we call  
21 an average ground water fraction raster, and that has a  
22 delineation of whether or not an area is irrigated by  
23 only surface water, only ground water, or if it's mix  
24 source, an estimate of on a ten-year average, how much  
25 of the supply comes from surface water for lands in that

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1 area.  
2 Q. How is that determined?  
3 A. Well, I guess can you be more specific? How  
4 is what, which part --  
5 Q. How does the Department determine whether  
6 lands are surface, ground, or, you know, mixed use with  
7 the fraction that you mentioned?  
8 A. Okay. So whether they are surface water, or  
9 ground water, or mixed use was determined by IWRRI  
10 during the development of ESPAM1.1 using water right  
11 data, so water right place of use data.  
12 Q. Okay. Can you explain further what they did  
13 with that water right data to determine the mixed use?  
14 A. To determine where there was mixed use or the  
15 fraction on the mixed use?  
16 Q. Yeah, the fraction. I'm sorry.  
17 A. Okay. So the fraction on the mixed use,  
18 that's something we have updated when we've rolled out  
19 new model versions, so I can speak to that. We  
20 estimated that -- well, let me back up.  
21 IWRRI, there is some areas where IWRRI did an  
22 estimate for model calibration. And then there were  
23 other areas where they increased the fraction to avoid  
24 computation of deficit irrigation during calibration.  
25 So those ground water fractions are used for calibration

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1 were higher than the average. So for those areas in the  
2 average ground water fraction file, those areas have  
3 been adjusted from IWRRI's fraction based on surface  
4 water availability.  
5 So for those areas, I took the available  
6 surface water supply, assumed a duty of four acre-feet  
7 per acre, figured out how many acres that would be able  
8 to irrigate on average during that ten-year period. And  
9 then the remaining acres were assumed to be covered by  
10 ground water. And that's how we estimated that fraction  
11 for those areas.  
12 Q. When was the original IWRRI database  
13 generated?  
14 A. I don't know before I started here.  
15 Q. Okay. Do the irrigated acres then get linked  
16 to the water rights for the point of diversions?  
17 A. No, because the water rights are aggregated by  
18 model cell before the priority date is linked to a  
19 number of acres.  
20 Q. So the model at some point in this process,  
21 for each model cell it's calculating how many irrigated  
22 acres exist with ground water by priority date?  
23 A. The curtailment IAR tool is doing that, yes.  
24 Q. Okay. We're getting above my pay grade at  
25 this point. But I may come up with some follow-up

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1 questions after I visit with Sophia. Let me shift gears  
2 a little bit.  
3 If I go back to your technical working group  
4 presentation, that's Deposition [Exhibit 6](#). And if you  
5 look at page 5 the heading on that page is "Steady State  
6 Versus Transient State Model Simulations." Do you see  
7 that?  
8 A. Yes.  
9 Q. At the bottom part of that slide, explains  
10 that steady state model simulations predict long-term  
11 responses to continuous curtailment of ground water use  
12 at a constant rate. And then it says, there is a bullet  
13 that says, "Curtailments ordered as prescribed in the  
14 methodology order are not continuous or long term." And  
15 "Ground water use does not occur at a constant rate  
16 throughout the year."  
17 And then if you flip two pages back, there is  
18 another slide labeled "Steady State Versus Transient  
19 Model Simulations." And the second main heading says,  
20 "Transient ESPAM simulation for calculation of  
21 curtailment priority date." And then there is two  
22 subheadings that say, "The transient state predicts  
23 timing and magnitude of response to time-varying changes  
24 in aquifer stress resulting from short-term curtailment  
25 of ground water use."

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1 I understood from this presentation that the  
2 point you were making was that steady at transient state  
3 use of the model is more technically accurate for the  
4 type of curtailments that result under the Surface Water  
5 Coalition delivery call; is that right?  
6 A. Yes.  
7 Q. And when you were in discussions with Matt  
8 Anders about the staff's preliminary recommendations,  
9 which is Deposition [Exhibit 4](#), did you discuss including  
10 the change from steady state to transient state in that  
11 recommendation?  
12 A. Yes.  
13 Q. And do you have any knowledge as to why it was  
14 not included?  
15 A. Yes, I answered that question for Candice, but  
16 I can answer it again. So again, you know, the  
17 technical analysis is, you know, needs to be related  
18 back to what question you want the model to answer. So  
19 if the question you want to ask the model is, you know,  
20 how much curtailment is needed to get this demand  
21 shortfall volume to the near Blackfoot to Minidoka reach  
22 during the time of need this irrigation season? Then  
23 it's clear that you need to run a transient analysis.  
24 However, what the purpose of the curtailment is, and  
25 what that question that you want to ask the model is, is

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1 ultimately a legal or policy decision that the Director  
2 needs to make. And, you know, staff, we did not think  
3 it was appropriate for us to tell him what the purpose  
4 of the curtailment is. We provided the information for  
5 him to make a decision on what was appropriate after he  
6 has made a decision on what the purpose of the  
7 curtailment is.  
8 Q. Were you instructed not to include that in the  
9 recommendation that was made on December 23rd, 2022?  
10 A. Well, I didn't -- I was not an author on that  
11 memo. So I wasn't instructed on what to include in it.  
12 Q. Okay. Was there any discussion about  
13 including at least the technical aspect of transient  
14 state versus steady state, and then flagging the, you  
15 know, legal policy question, you know, for the Director  
16 to decide?  
17 A. Not that I recall specifically. I mean, we  
18 had already presented all this information to both the  
19 technical working group and the Director, so...  
20 Q. Okay. Let me ask a few follow-up questions.  
21 And I know Candice asked you a few questions just about  
22 historical use of the model in transient state. You  
23 mentioned that the model with utilizing a transient  
24 state is part of the Rangen delivery call; is that  
25 right?

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1 A. Yes.  
2 Q. Have you or other Department modelers done  
3 transient state model runs of the ESPA model for other  
4 purposes?  
5 A. For other purposes, yes.  
6 Q. Please explain.  
7 A. Other purposes that transient simulations have  
8 been done for, include evaluating the impacts of managed  
9 recharge, and evaluating the properties of managed for  
10 recharge sites, or potential sites. Modeling the impact  
11 of pumping reductions that were reported by IGWA in its  
12 performance reports. That wasn't an analysis I did, but  
13 other staff did that analysis for presentation to the  
14 Water Resource Board. There may be others. I'm not  
15 sure that's an inclusive list, but that's a couple of  
16 examples I can think of.  
17 Q. Okay. And you started to work at the  
18 Department in 2010, I believe; is that right?  
19 A. Yes.  
20 Q. When did you begin working with the ESPA model  
21 within the Department?  
22 A. I don't recall exactly, but pretty shortly  
23 thereafter.  
24 Q. Okay. I think my other question Candice  
25 covered. Okay. Let me turn your attention to

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1 Deposition [Exhibit 2](#), which is the Fifth Methodology  
2 Order. And I'll have you turn to page 31. Actually,  
3 you can turn back one page to 29. There is a heading  
4 there that is labeled as "Determination of Curtailment  
5 Date." And if my recollection is correct, you  
6 participated in drafting this section of the methodology  
7 order; is that right?  
8 A. Yes.  
9 Q. Okay. Let's flip back to page 31. And I'll  
10 draw your attention to paragraphs 88 and 89 at the top  
11 of that page. I'll just read for the record what it  
12 says in paragraph 88. "Steady state simulations are  
13 appropriate for evaluating the average annual impact of  
14 aquifer stresses that have been, or will be, applied for  
15 decades (i.e., ground water pumping year after year) or  
16 continuous curtailment to the same date every year. The  
17 steady state simulation of continuous curtailment  
18 applied in the Fourth Methodology Order does not  
19 simulate the short-term curtailments prescribed in the  
20 in methodology. The methodology prescribes curtailment  
21 only in years with predicted IDS or carryover shortfall  
22 and prescribes the determination of a curtailment  
23 priority date that varies the magnitude of the predicted  
24 shortfall."  
25 The technical analysis supporting that

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1 paragraph 88, that would have been true when the Fourth  
2 Methodology Order was adopted in 2016; correct?  
3 A. Correct.  
4 Q. And Department modeling staff would have to  
5 understand it, the technical support for that finding  
6 when the Fourth Methodology Order was adopted in 2016?  
7 MR. BAXTER: Objection. It calls for  
8 speculation on behalf of the witness.  
9 But, Jennifer, go ahead and answer the  
10 question.  
11 THE WITNESS: Yeah, again, I can only speak  
12 for myself. But, yes, I understood that at the time.  
13 Q. (BY MR. BUDGE) Okay. And then if we turn to  
14 paragraph 89, it reads "Transient simulations are  
15 necessary to evaluate the impacts of aquifer stresses  
16 applied for short periods of time (i.e., short-term  
17 curtailments with varying priority dates). Transient  
18 simulations are necessary to simulate the short-term  
19 curtailments prescribed in the methodology."  
20 The technical rationale for paragraph 89 would  
21 have been true when the Fourth Methodology Order was  
22 adopted in 2016; correct?  
23 A. Correct.  
24 Q. Okay. Let me have you turn to page 35 in that  
25 same order. Paragraph 19 on page 35, talks about



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1 application of the model in transient state versus  
2 steady state. And halfway through there is a sentence  
3 that says, while the first version of the ESPA ground  
4 water flow model was not calibrated at a time-scale that  
5 supported in-season transient modeling, the current  
6 version was calibrated using monthly stress periods and  
7 half-month time steps, a refinement that facilitates  
8 in-season transient modeling for calculating the  
9 response to curtailment of ground water use.  
10 I think Candice asked you this question. I  
11 just want to make sure I didn't misunderstand it. Was  
12 it in 2013, that the ESPA model was calibrated using  
13 monthly stress periods?  
14 A. Yes, I believe that was the year that ESPAM2.1  
15 was released.  
16 Q. Okay. And then Version 2.1 also was  
17 calibrated with half-month time steps?  
18 A. Yes.  
19 Q. Beginning in 2013 then?  
20 MR. BAXTER: Was that a question, TJ, or --  
21 Q. (BY MR. BUDGE) Yeah. Just to confirm, that  
22 began in 2013?  
23 A. I believe that's correct, yes.  
24 Q. The next question. I have sometimes heard  
25 references to the model being run to predict reach gains

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1 from near Blackfoot to Minidoka, and sometimes being run  
2 to predict reach gains from near Blackfoot to Neeley.  
3 Under the Fifth Methodology Order, which of those  
4 reaches are you utilizing as the target reach?  
5 A. Near Blackfoot to Minidoka.  
6 Q. Is that the reach that's been used in all  
7 prior versions of the methodology order?  
8 A. To my knowledge that has been the reach,  
9 but --  
10 Q. Does that -- sorry. I didn't mean to cut you  
11 off. Go ahead.  
12 A. To my knowledge that's been the reach. But I  
13 can't speak to what was used before I started working,  
14 doing analyses for this delivery call.  
15 Q. Does the model predict that curtailment, you  
16 know, throughout the ESPA as has been ordered here, that  
17 it will generate reach gains between below Minidoka and  
18 above Neeley -- excuse me -- between Minidoka and  
19 Milner?  
20 A. Yes, there will also be additional reach gains  
21 to other reaches of the river as a result of a  
22 curtailment.  
23 Q. And why aren't reach gains between Minidoka  
24 and Milner considered in the Surface Water Coalition  
25 delivery call in the Fifth Methodology Order?

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1 A. Oh, I'm sorry. There will be reach gains to  
2 other reaches of the river, but not from Minidoka to  
3 Milner.  
4 Q. Okay. There is no reach gains between  
5 Minidoka and Milner?  
6 A. No, the aquifer is not in direct hydraulic  
7 connection with the Snake River in that reach. And  
8 there is no interaction in the model between the aquifer  
9 and the river between Minidoka and Milner.  
10 Q. Okay. Thank you. I have heard it said before  
11 that the reach gain predictions for the near Blackfoot  
12 to Minidoka reach have a relatively high degree of  
13 uncertainty compared to other model predictions for  
14 other reaches; is that correct?  
15 A. I don't think that's correct.  
16 Q. Okay. Have you or anybody else in the  
17 Department done an analysis of model uncertainty with  
18 respect to each designated reach that the model  
19 utilizes?  
20 A. Yes, that's in the predictive uncertainty  
21 report that was published with ESPAM2.2 and was included  
22 in the materials that we submitted.  
23 Q. Okay. Let me draw your attention back to the  
24 presentation you gave in November to the technical  
25 group. That's deposition [Exhibit 6](#). And I'm going to

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1 have you flip to page, Slide 14. That slide, the  
2 heading is "Predicted response to May 1 curtailment of  
3 water rights junior to October 11, 1900." Do you see  
4 that?  
5 A. I don't think I'm on the correct page. Okay.  
6 Q. I don't know if you can see this, but this  
7 (indicating) is the one I'm looking at.  
8 A. Yes, I'm there now.  
9 Q. What's the significance of the October 11th,  
10 1900 date?  
11 A. Matt Anders told me that would be the  
12 controlling priority date. So basically, we would not  
13 curtail anybody senior to October 11, 1900, because the  
14 water right that -- the natural flow rights that are  
15 associated with the shortfall are dated October 11th,  
16 1900.  
17 Q. Okay. So also on that slide in the middle of  
18 the graph, there is a little window that says, April to  
19 September volume, 97,700 acre-feet. Am I understanding  
20 correctly that if there was actual curtailment of all  
21 rights junior to all rights junior to October 11th,  
22 1900. The model predicts that 97,700 acre-feet will  
23 accrue to the near Blackfoot to Minidoka reach in April  
24 to September of the first year of curtailment?  
25 A. Yes.

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1 Q. So does that mean then in the absence the  
2 mitigation plans in a year where Twin Falls Canal  
3 Company had a demand shortfall, or any member of  
4 the -- I guess Twin Falls, of 97,700 acre-feet or  
5 greater, you would curtail every water junior to that  
6 1900 date?  
7 A. Well, as Candice brought up, if there were  
8 multiple years in a row of curtailment, then this volume  
9 could increase. So if there was a curtailment -- if  
10 there was a shortfall 20 years in a row, and there was  
11 curtailment 20 years in a row, then this volume would  
12 get larger, and the curtailment date would be adjusted  
13 accordingly, so not necessarily.  
14 Q. But in any given year where the April  
15 as-applied order predicts a demand shortfall greater  
16 than 97,700 acre-feet, that would result in curtailment  
17 of every ground water right junior to 1900?  
18 A. If there have not been previous curtailments,  
19 previous actual curtailments, then I think the answer  
20 would be, yes.  
21 Q. Wouldn't previous curtailments just affect the  
22 demand shortfall figure?  
23 A. Well, yeah, that's a good point. The demand  
24 shortfall should go down. But there would also be some  
25 water accruing over time as well. So you would have

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1 both effects.  
2 Q. Let me have you turn to the prior slide, which  
3 is labeled "Comparison of priority dates calculated for  
4 April DS forecasts (May 1 curtailment)."  
5 Actually, Jennifer, I'm going to skip that  
6 right now. Instead, I'm going to ask Dylan to provide a  
7 table titled, "Summary of Hindcast SWC Delivery Call  
8 Demand Shortfall Calculations 2022."  
9 MR. BUDGE: Dylan, do you have that?  
10 MR. ANDERSON: Yes.  
11 MR. BUDGE: I believe we're on Deposition  
12 [Exhibit 7](#); is that right?  
13 THE REPORTER: Yes.  
14 ([Exhibit 7](#) marked.)  
15 Q. (BY MR. BUDGE) This table has become  
16 Deposition [Exhibit No. 7](#). Do you recognize this table,  
17 Jennifer?  
18 A. I think I've seen a version of it. I'm not  
19 sure if it was this version.  
20 Q. Okay. Did you contribute to the creation of  
21 this table?  
22 A. No.  
23 Q. Okay. I'm going to move on then. I've got a  
24 couple technical questions that I hope I can ask  
25 clearly. In the documents that are uploaded to the

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1 Department's website, there is a data folder that  
2 contains a file labeled JR12301953/ag/super transient.  
3 Are you familiar with that data file?  
4 A. Yes.  
5 Q. My understanding is that data file has monthly  
6 stress periods. And then there is another file on the  
7 same place labeled crop share/IGWA/ag\_IGWA/super  
8 transient ANNAV. Are you familiar with that data file?  
9 A. Yes.  
10 Q. My understanding is that latter data file has  
11 a single stress period with an average value. Can you  
12 explain why the first data file I mentioned has monthly  
13 stress periods, whereas, the second data file has a  
14 single stress period with an average annual value?  
15 A. Yes. So it's going back to the question we're  
16 asking the model. So the question I'm asking the model  
17 in calculation of the priority date is, what priority  
18 date would we need to curtail to predict that we would  
19 get 75,200 acre-feet to the near Blackfoot to Minidoka  
20 reach between May 1 and September 30th of this year,  
21 assuming that the curtailment starts on May 1st? That's  
22 the question I'm asking it. So I'm doing the transient  
23 analysis.  
24 For the calculation of proportionate share,  
25 we're asking a different question. Because we're asking

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1 what a different -- we have a couple different  
2 mitigation parties that we needed to calculate their  
3 proportionate share of the shortfall. So the shortfall  
4 is the result of decades of ground water pumping.  
5 So the shortfall is caused by decades of  
6 ground water pumping. So when we look at their  
7 proportionate share of the shortfall, it is more -- it  
8 is actually appropriate in that case to look at the  
9 steady state analysis. And as I mentioned in the  
10 presentation, and as mentioned in the order, a steady  
11 state analysis is appropriate when you are looking at  
12 the average annual impact. You are looking to find the  
13 average annual impact of something that's been going on  
14 for decades like the ground water pumping has.  
15 Q. I appreciate that explanation. That's really  
16 helpful. I want to follow up on that and just ask a few  
17 questions about the proportionate share calculation.  
18 And there is a document that I'll ask Dylan Anderson to  
19 give to you. It's an email between myself and Garrick  
20 Baxter. The parties to the case are copied on the  
21 email. But it contains a table showing each of the  
22 ground water districts proportionate share of the demand  
23 shortfall.  
24 MR. BUDGE: Dylan, can you find that?  
25 MR. BAXTER: He's looking for it.

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1 MR. ANDERSON: To who, TJ?  
2 MR. BAXTER: I think it's to me.  
3 MR. BUDGE: It's a one-page document. It's an  
4 email between Garrick and I. The other parties to the  
5 case are copied in the email. And it has got a table in  
6 the email that shows the proportionate share for each  
7 district.  
8 MR. SIMPSON: Do you have a date, TJ?  
9 MR. BUDGE: It's Wednesday, May 3rd, 2023.  
10 ([Exhibit 8](#) marked.)  
11 Q. (BY MR. BUDGE) Jennifer, in that table there  
12 is a table, and it shows each ground water districts  
13 proportionate share of the projected demand shortfall  
14 for 2023 and from the April as-applied order. Do you  
15 see that?  
16 A. I see the table.  
17 Q. Did you generate that table or the data that's  
18 in the table?  
19 A. Yes, I did.  
20 Q. A moment ago you were explaining the file one  
21 of the data files that the Department has uploaded that  
22 used an annual stress period instead of a monthly time  
23 step. Maybe I'll just have you explain again how you  
24 calculated each districts proportionate share of the  
25 demand shortfall?

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1 A. It was calculated using -- it was calculated  
2 by -- well, first of all, it was calculated from a  
3 preliminary list of water rights flagged as being  
4 mitigated by IGWA, and then with preliminary information  
5 on which ground water district they are a member of.  
6 And this was not part of the order.  
7 This information, my understanding, it was  
8 provided as a courtesy to IGWA at your request. But  
9 it's calculated the same way as I just described IGWA's  
10 proportionate share being calculated. Except that for  
11 each district, it's done by looking at the water rights  
12 that are flagged as being participating in their  
13 district, as opposed to the water rights that are  
14 flagged as being mitigated by IGWA as a whole.  
15 Q. Okay. And the method that you used to  
16 generate the data in this table, is that the same method  
17 that you used to calculate the proportionate share of  
18 A & B Irrigation District as shown in Footnote 5 of the  
19 April as-applied order?  
20 A. The MODFLOW modeling portion of it is the  
21 same.  
22 Q. Which portion is different?  
23 A. The pre-processing is different. So in this  
24 case, I used the curtailment IAR tool we had talked  
25 about earlier, to calculate junior irrigated acres by

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1 model cell. Whereas, for A & B, we don't need to do  
2 that, because their water rights are very  
3 straightforward. And we know exactly how -- and they  
4 have filed a mitigation plan that identified their water  
5 rights, and how many acres are associated with each  
6 water right. So in their case, we don't have to use the  
7 curtailment IAR tool. We just take the number of acres  
8 associated with their junior water rights directly, and  
9 multiply that by the consumptive use, and then run that  
10 through the MODFLOW model. So the MODFLOW modeling part  
11 is the same. It's just the pre-processor that's  
12 different.  
13 Q. I understand. Thank you. So in Footnote 5 of  
14 the April 2023 As-Applied Order, it states that A & B  
15 Irrigation District's proportionate share of the  
16 predicted demand shortfall of 75,200 acre-feet is 458  
17 acre-feet. If A & B's water right was curtailed this  
18 year, does the model predict that an additional 458  
19 acre-feet would accrue to the near Blackfoot to Minidoka  
20 reach from May through September?  
21 A. No, it does not.  
22 Q. Do you know the volume that the model predicts  
23 would accrue to that reach for that target period?  
24 A. It would be considerably less than that.  
25 Q. And can you explain the difference, why that

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1 would be less?  
2 A. Because as I said, with calculating the  
3 proportionate share of the shortfall, the question I'm  
4 asking the model is, you know, what has been this user's  
5 contribution to the shortfall resulting from decades of  
6 their ground water pumping? So I'm using a steady state  
7 analysis. And that's --  
8 Q. Okay.  
9 A. Yeah.  
10 Q. And so if we turn back to the table that's in  
11 Deposition [Exhibit 8](#). Is the same true for the  
12 districts that are listed there, if they were actually  
13 curtailed this year back to December 30th, 1953 -- well,  
14 let's look at one district, in particular.  
15 We'll look at North Snake. That table assigns  
16 to the North Snake a 3,262 acre-foot share of the demand  
17 shortfall. If curtailment occurred within North Snake  
18 this year junior to December 30th, 1953, does the model  
19 predict that 3,262 acre-feet would accrue to the near  
20 Blackfoot to Minidoka reach?  
21 A. In the case of North Snake, no, it would be  
22 less than that.  
23 Q. Do you know what the model does predict for  
24 North Snake?  
25 A. No, I don't think I ran that as a transient

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1 analysis.  
2 Q. Okay. Are there other ways that the demand  
3 shortfall could be apportioned out among the various  
4 ground water user groups?  
5 A. I'm sure there are other ways.  
6 Q. I mean, is there a way to calculate it so that  
7 for each district curtailment would -- let me rephrase  
8 that question.  
9 For each ground water district, are you able  
10 to run the model in a way that would predict how much  
11 water would accrue from near Blackfoot to Minidoka under  
12 the 1953 curtailment date for the May to September time  
13 period?  
14 A. Yes, those model runs could be done.  
15 Q. Okay. Were you instructed not to use that  
16 approach?  
17 A. No, I was not instructed.  
18 Q. The method that you utilized was that solely  
19 of your own making?  
20 A. Yes.  
21 Q. That was not based on discussions with other  
22 Department staff members?  
23 A. I believe I presented it and did not receive  
24 any comments.  
25 Q. Did you or anyone else at the Department

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1 calculate the total number of water rights junior to  
2 December 30th, 1953, that would be curtailed in the  
3 absence of mitigation plans?  
4 A. I did not go into the POD file and count up  
5 the water rights that were junior, no.  
6 Q. Do you know the total diversion rate under  
7 water rights junior to December 30th, 1953 that would be  
8 curtailed in the absence of mitigation plans?  
9 A. There is a total consumptive use rate  
10 estimated in the files that were provided. But that is  
11 not the same as the diversion rate on the face of the  
12 water right. It would be less than that.  
13 Q. I see. Do you know what that number is  
14 offhand?  
15 A. No.  
16 Q. Have you or anyone else at the Department  
17 calculated the total volume, authorized diversion volume  
18 of water rights junior to December 30th, 1953, that  
19 would be curtailed in the absence of mitigation plans?  
20 A. Similarly that same spreadsheet has a  
21 consumptive use volume, which is not the same as the  
22 volume that would be listed on the water right, if there  
23 is a volume listed.  
24 Q. Did you or anyone else at the Department  
25 attempt to quantify the projected or estimated crop

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1 loss, or any other adverse effect to Twin Falls Canal  
2 Company as a result of the forecast demand shortfall of  
3 75,200 acre-feet?  
4 A. I am not aware of -- I did not do that, and I  
5 am not aware of it.  
6 Q. Okay. And I believe Ms. McHugh asked you  
7 whether you gave any consideration to the development or  
8 implementation of a trim line in connection with your  
9 analyses related to the Fifth Methodology Order. And if  
10 I remember right, your answer was that you had not done  
11 anything in that regard?  
12 A. No.  
13 Q. Did you have discussions with any Department  
14 staff members about potential use of the trim line?  
15 MR. BAXTER: Jennifer, pause there for a  
16 second, if you would. To the extent your answer to this  
17 question would require you to disclose information  
18 regarding the Director's deliberative process on legal  
19 and policy considerations, you are instructed not to  
20 answer the question.  
21 THE WITNESS: Okay. So I've been instructed  
22 not to answer questions about what discussions we may or  
23 may not have had.  
24 Q. (BY MR. BUDGE) Have you personally thought  
25 about possibilities for use of a trim line under the

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1 Fifth Methodology Order or the April 2023 As-Applied  
2 Order?  
3 A. No.  
4 Q. Given your familiarity with the model and the  
5 aquifer, are there any geologic features within the  
6 aquifer that you think may justify a trim line based on  
7 geology, similar to the Great Rift trim line that was  
8 imposed in the Rangen delivery call?  
9 A. No, not in the case of the near Blackfoot to  
10 Minidoka reach.  
11 Q. No, meaning you have not identified any  
12 features that you think may serve as an appropriate  
13 basis for a trim line?  
14 A. I mean, no, I don't think there are features  
15 that would be appropriate for a trim line for the near  
16 Blackfoot to Minidoka reach. If you look at the steady  
17 state response functions for that reach, they extend.  
18 There are significant contributions in the long-term  
19 from both sides of the Great Rift.  
20 Q. Okay. Separate from development of the Fifth  
21 Methodology Order, have you done any analysis of  
22 potential trim lines in the context of application of a  
23 transient state model to the Surface Water Coalition  
24 delivery call?  
25 A. No.

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1 Q. Have you been directed not to do those types  
2 of analyses?  
3 A. No, I haven't been directed not to do them.  
4 Q. It's just that nobody has asked you to do  
5 them, it sounds like?  
6 A. I have not been asked to do them either.  
7 Q. Okay. Are you aware of any aspect of the  
8 Fourth Methodology Order that would have precluded the  
9 Department from utilizing it in the 2023 irrigation  
10 season?  
11 A. That seems like more of a legal or policy  
12 question to me.  
13 Q. Are you aware of any technical shortcomings of  
14 the Fourth Methodology Order that would have prevented  
15 the Director from utilizing it in the 2023 irrigation  
16 season?  
17 A. I mean, I think the -- again, I think that's a  
18 technical or policy question is for whether or not that  
19 would prevent the Department from using it. The  
20 technical information that was presented and was  
21 incorporated into the Fifth Methodology Order, you know,  
22 it was incorporated into the Fifth Methodology Order,  
23 you know, because the Department thinks it's valid  
24 technical information. So whether or not that  
25 information precludes him from using the Fourth

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1 Methodology Order this irrigation season? I don't think  
2 that's a technical question. I think that's a legal or  
3 policy issue in my mind.  
4 Q. Are you aware of any technical aspects of the  
5 Fourth Methodology Order that are so problematic that  
6 from a technical standpoint, they needed to be resolved  
7 immediately?  
8 MR. BAXTER: I'm going to object to the  
9 question. TJ, I think that's essentially, you know, a  
10 restatement of your earlier question. And I think  
11 Jennifer has already answered it.  
12 But to the extent, Jennifer, you believe it's  
13 a different question, go ahead and answer the question.  
14 THE WITNESS: No, I was going to say, again, I  
15 think how problematic they are, is a technical or policy  
16 question, not a technical question. I'm sorry. A legal  
17 and policy question, not a technical question. I  
18 believe I misspoke there.  
19 Q. (BY MR. BUDGE) Prior to when Matt Anders  
20 advised you that Department staff were undertaking a  
21 review of the Fourth Methodology Order, had you  
22 identified problems with the Fourth Methodology Order  
23 that you felt needed to be reconciled by the Department?  
24 A. No, I did not initiate any of the review of  
25 the Fourth Methodology Order.

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1 Q. Are you aware of any emergency-type situations  
2 or technical reasons that would require an immediate  
3 change from the Fourth Methodology Order to the Fifth  
4 Methodology Order?  
5 A. Again, I think that's a legal or policy  
6 question.  
7 Q. Well, what I'm asking, are there technical  
8 issues that created an emergency? Some new technical  
9 data or analysis that you felt compelled an immediate  
10 change to the methodology order?  
11 A. I mean I am aware that in 2021 and 2022, I  
12 believe the end of season calculated shortfall was  
13 larger than at least some, or perhaps all of the  
14 predicted shortfalls, which I do think may have led to,  
15 you know, a technical basis for -- you know, for a  
16 reason to review the methodology.  
17 Q. And where did you gather that information?  
18 A. That information was in the as-applied orders  
19 issued in April, July, August, and over the winter for  
20 the reasonable carryover and final in-season demand  
21 shortfall for both 2021 and 2022. So those numbers are  
22 in those eight orders. And the reason I'm familiar with  
23 them is because I used them when I did the hindcasting  
24 of the curtailment dates for those two years.  
25 MR. BUDGE: Okay. I think that's all the

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1 questions I have for you right now, Jennifer. I think  
2 you may be questioned from some of the other witnesses.  
3 But I do just want to let you know that we are not able  
4 to close your deposition today, because we have not  
5 completed discovery in this matter. There is still  
6 information that we are waiting on from the Department.  
7 And we have not had adequate time to prepare for the  
8 deposition given the volume of data that's involved in  
9 the Fifth Methodology Order, and the April 2023  
10 As-Applied Order.  
11 So there is a possibility that we'll have to  
12 call you back for further questioning. But that's all  
13 the questions that I have for you at this time.  
14 MR. BAXTER: We are going to need to take a  
15 break. How about a ten-minute break?  
16 MS. KLAHN: So ten minutes, is that what we're  
17 doing?  
18 MR. BAXTER: Yes.  
19 (Recess.)  
20 MR. BAXTER: I think we were going to let  
21 Dylan go next.  
22 EXAMINATION  
23 QUESTIONS BY MR. ANDERSON:  
24 Q. Thank you for being here. Dylan Anderson for  
25 the record. I'm going to pick up a little where TJ left

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1 off. He was talking to you about the model. It was  
2 getting a little bit technical. And there is a lot of  
3 people who read these, and need a little bit of base.  
4 So just really quickly, I am going to have a little bit  
5 of base on the model.  
6 So currently, the most correct version of the  
7 model is Version 2.2; correct?  
8 A. Correct.  
9 Q. And 2.2 is fully employed and used by the  
10 Department as of this date?  
11 A. Yes.  
12 Q. The previous version, 2.1, when was that  
13 finalized and used?  
14 A. I believe it was sometime in 2013.  
15 Q. And then prior to that, the Version 1.1,  
16 that's the genesis of this model; correct, the first  
17 iteration?  
18 A. That was the version that was being used when  
19 I started work here.  
20 Q. Okay. From your understanding of that Version  
21 1.1, it was a single layer model; correct?  
22 A. Correct.  
23 Q. Is Version 2.2 that we currently employ, is it  
24 also a single layer model?  
25 A. Yes.

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1 Q. In Version 2.1, and maybe I'll admit that to  
2 the record just so you have something to reference.  
3 It's whatever the next exhibit is, [Exhibit 9](#).  
4 ([Exhibit 9](#) marked.)  
5 MR. ANDERSON: Do you need to look at it?  
6 MR. BAXTER: Is it one of the documents that  
7 Jennifer provided on the IDWR's website?  
8 MR. ANDERSON: I am not sure.  
9 THE WITNESS: No, it's not.  
10 MR. ANDERSON: No, it's just a final report  
11 version.  
12 MR. SIMPSON: That's Version 2.1?  
13 MR. ANDERSON: Yes, 2.1 finalized in 2013.  
14 MR. FLETCHER: What is that document called?  
15 MR. BAXTER: Do you want to read the name of  
16 the document?  
17 MR. SIMPSON: [Exhibit 9](#), what is it called?  
18 THE WITNESS: "Enhanced Snake "Plan Aquifer  
19 Model, Version 2.1, Final Report, January 2013."  
20 MR. FLETCHER: Thank you.  
21 Q. (BY MR. ANDERSON) Okay. And would you mind  
22 turning to page 4 of that document. There is a  
23 paragraph there at the end. I can share, if you want to  
24 look at it. Would you mind just reading into the record  
25 that last paragraph?

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1 A. "It is anticipated that the next five to ten  
2 years will see an evolutionary progression through  
3 Version 2.2, and 2.3, et cetera, as moderate revisions  
4 are made to the ESPAM. When a significant change to the  
5 model conceptual design is implemented, it will be  
6 released as ESPAM3.0. This will likely include  
7 significant conceptual model changes or broadening of  
8 scope and purpose (e.g., multiple aquifer layers,  
9 changes in modeling software or algorithms, internal  
10 incorporation of surface water processes in the  
11 modeling, linkage to surface water models)."  
12 Q. Okay. Thank you. And so in 2.1, it's been  
13 roughly ten years. We haven't gotten to that point; is  
14 that correct?  
15 A. We --  
16 Q. At least --  
17 A. Yeah, what they are saying is they anticipated  
18 what would happen here has ultimately not been what has  
19 happened within the last ten years. Yeah.  
20 Q. Thank you. And I'm not doing this as a rebuke  
21 or anything. I'm not trying to call it out. I just  
22 want to more understand the process. So I'm not trying  
23 to accuse anybody of anything. Well, let me go back and  
24 just talk about another aspect.  
25 In 1.1, it was a confined aquifer model;

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1 correct?  
2 A. It's a time constant transmissivity  
3 representation of an unconfined aquifer.  
4 Q. And that was the case in 2.1. Do you recall  
5 if that was the case in the 1.1?  
6 A. Yes, it was.  
7 Q. That was the same?  
8 A. Yes.  
9 Q. So in 2.1, it does use as you say, the time  
10 constant transmissivity of the aquifer. Can you explain  
11 a little bit about that?  
12 A. Yeah. It's a simplification that's very  
13 commonly used in ground water aquifer models to improve  
14 the numeric stability of the computations. And as  
15 discussed in this report, you know, it's considered to  
16 be an acceptable simplification when the aquifer is  
17 thick enough that the change in saturated thickness with  
18 time is not an excessive percentage of the total  
19 saturated aquifer thickness.  
20 Q. And am I correct in stating that it's  
21 generally considered an unconfined aquifer?  
22 A. Yes.  
23 Q. And there is parts that are confined; is that  
24 correct?  
25 A. The model representation is a specific yield

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1 consistent with an unconfined aquifer is applied  
2 everywhere. And the time constant transmissivity is  
3 also applied everywhere. So that's what I'm saying,  
4 it's not really a confined representation because it  
5 doesn't have a confined storage value. But it has the  
6 time constant transmissivity assumption to promote  
7 numeric stability.  
8 Q. And that's how you could apply inputs in one  
9 part of the aquifer and determine how they would  
10 influence the other part of the aquifer; correct? Would  
11 that be more difficult if you were using a model that  
12 was completely unconfined?  
13 MR. BAXTER: I'm going to object. The  
14 questions are compound. You are coming with a question,  
15 and then you are jumping to another question before  
16 she's had an opportunity to answer your first question.  
17 MR. ANDERSON: I apologize.  
18 Q. (BY MR. ANDERSON) Let me restate that. So by  
19 doing that, you are allowed to measure the inputs on one  
20 part of the aquifer, and see how it affects another part  
21 of the aquifer; is that correct?  
22 A. It's correct that we can do that with this  
23 model, yes.  
24 Q. Would that be more difficult or easier with a  
25 model that was unconfined?

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1 A. It could also be done with a model that's  
2 unconfined. That a time-varying transmissivity  
3 unconfined representation might preclude us from using  
4 the super position version of the model, which makes  
5 analyses quicker and more convenient. But they can  
6 certainly be done in a fully populated model as well.  
7 Q. Do you think that that would be giving a more  
8 accurate or less accurate depiction of the current  
9 aquifer?  
10 A. I think it would give a very similar  
11 depiction.  
12 Q. What about multi-layer, would a multi-layer  
13 model give a more accurate representation of the  
14 aquifer, and I guess the differences among the aquifer?  
15 I didn't ask that very well. But do you want to answer  
16 that?  
17 A. On a very local scale, there are some areas  
18 where a multi-layer model might, if we had the data to  
19 support calibrating it, which we probably don't. If  
20 there were more data collected to the support that in a  
21 local area, that might provide a more accurate ability  
22 to match heads and simulate local conditions. But this  
23 is a regional scale model. And we are looking at  
24 regional scale predictions and impacts. That's what it  
25 was designed to do. And I think an overall regional

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1 scale of the aquifer, those kind of refinements would be  
2 a lot of investment into something that would not make  
3 much difference on a regional scale.  
4 Q. So do you feel like the directive, at least  
5 stated here in 2.1, to move towards those is no longer a  
6 mission for the Department?  
7 A. The Eastern Snake Hydrologic Modeling  
8 Committee has discussed, both when we finished 2.1 and  
9 when we finished 2.2, have discussed options, things  
10 that we might do to improve the model. And though a  
11 number of potential improvements have been discussed by  
12 the ESHMC after completion of 2.1, the potential  
13 improvements were prioritized by the ESHMC. And those  
14 are the improvements that got included in ESPAM2.2. And  
15 then we did the same thing when we concluded ESPAM2.2,  
16 we discussed potential improvements that we're working  
17 on now for the next version of the model. And those  
18 were prioritized by a vote of the committee members.  
19 And those are the improvements that we're working on  
20 now. And multiple layers has been discussed, but it has  
21 not become one of the priorities. And part of the  
22 reason is because nobody has been able to identify  
23 specific areas where we have data to support it or  
24 specific benefits that would.  
25 Q. Understood. So when you are talking about the

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1 decision to go from steady state to transient, the model  
2 has the ability to run both transient and steady state;  
3 correct?  
4 A. Yes.  
5 Q. So when you are making that decision, you are  
6 not really changing the model at all, you are just  
7 changing how you run it?  
8 A. Yes, you are just changing the input you give  
9 it and the time discreditation that you tell it to read  
10 input and produce output at.  
11 Q. And you mentioned earlier, I believe you said,  
12 that Director Tuthill had made the determination to use  
13 steady state as a policy decision rather than transient?  
14 A. I don't believe I said Director Tuthill.  
15 Q. Oh, I'm sorry. Who did you say?  
16 A. Director Dreher.  
17 Q. I'm sorry.  
18 A. Director Karl Dreher.  
19 Q. I'm sorry. That's correct. So you said  
20 Director Dreher made that determination to use steady  
21 state instead of transient. And you understood that it  
22 was a policy decision?  
23 A. I said that Allan Wylie told me that Director  
24 Dreher had made that decision, and that it was a policy  
25 decision.

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1 Q. Because of the amount of acreages that would  
2 be curtailed under transient versus steady state would  
3 be a bigger hardship; is that what you understood?  
4 A. What Allan Wylie told me was that, you know,  
5 as we discussed, there will be additional water. If  
6 there is curtailment, there will be additional water  
7 that accrues during the next year, and the year after.  
8 And what Allan Wylie said was that Director Dreher was  
9 concerned that, well, we don't know whether those future  
10 years are going to be dry years or wet years. And that  
11 water might not be needed in that future year.  
12 Q. Understood. So any decision to change the  
13 model, are those decisions technically driven or are  
14 they policy driven?  
15 A. To change the model, the intent of the Eastern  
16 Snake Hydrologic Modeling Committee is that the modeling  
17 committee is comprised of technical consultants and  
18 university people that -- but all technical people. And  
19 that the revisions to the model are intended to be  
20 technical improvements.  
21 Q. So in improving the model, it's safe to say,  
22 that's a technical decision how using the model can be a  
23 policy decision in how it's used? Is that accurate to  
24 say?  
25 A. Well, the policy decision is, yeah, what

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1 question did you want to ask the model. That's the  
2 policy decision.  
3 Q. Thank you.  
4 A. And then you tailor your simulation to address  
5 that question.  
6 Q. I wanted to just ask real quick. You  
7 mentioned that you had heard or that you understood,  
8 that the shortfall in 2021 and 2022, was greater at the  
9 end of the year than it was in the predictions in April;  
10 correct?  
11 A. Correct.  
12 Q. So when you look at a prediction, is it more  
13 important to be an accurate prediction, or is it more  
14 important to overpredict?  
15 MR. BAXTER: Objection. It calls for a legal  
16 conclusion. I'm assuming you are framing the question  
17 of, is it more important from the Department's  
18 standpoint?  
19 Q. (BY MR. ANDERSON) I just mean a technical  
20 standpoint. If you are creating a prediction, a  
21 technical prediction, what are the parameters of a  
22 technical prediction? What are you trying to achieve  
23 with a prediction?  
24 MR. BAXTER: Go ahead and answer the question,  
25 if you understand the question.

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1 THE WITNESS: I understand the question. The  
2 technical prediction -- the courts have answered your  
3 question with regard to the April forecast supply  
4 prediction.  
5 Q. (BY MR. ANDERSON) That's not what I asked. I  
6 just mean in a technical sense, if you are creating a  
7 prediction, what does that mean? What are the  
8 parameters of a prediction? How do you create a good  
9 prediction in a technical world? I assume you do this a  
10 lot.  
11 A. Well, I mean your -- you create a prediction.  
12 But whether or not you apply some sort of, you know,  
13 factor of safety to it to make it a more conservative  
14 prediction, that's, you know, a policy decision. And it  
15 depends on the situation.  
16 Q. Okay. I understand that. Still, I'm going to  
17 ask the question again. What are the parameters of  
18 making a prediction? I'm not talking about anything  
19 with the legal world. I just mean, when you want to  
20 make a prediction in your technical expertise, what  
21 makes a good prediction? What are the factors or  
22 aspects of a good prediction?  
23 A. I'm not sure what you mean by parameters or  
24 factors of a good prediction.  
25 Q. What makes a good prediction? Is it accuracy

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1 to what actually happens or --  
2 A. Well, I mean, if a -- you know, when you are  
3 making a prediction, it's a prediction. And there is  
4 some uncertainty. And whether or not it reflects what  
5 actually happens, depends on -- I mean, you have to make  
6 assumptions when you make a prediction.  
7 So, you know, what makes the best prediction  
8 possible is if you can, you know, use the best available  
9 science to make that prediction. And that's what we  
10 attempt to do with the ground water flow model. There  
11 is uncertainty on those predictions. And how that  
12 uncertainty is applied, that is a policy decision or a  
13 legal decision.  
14 Q. Okay. I understand that. I understand the  
15 policy and legal aspect of it. I guess I just want to  
16 better understand the purpose of the prediction. For  
17 example, is it more important to be close to the actual  
18 number or well below? Because it seems like the way you  
19 stated it, if you went above what the actual number was,  
20 all of a sudden that was an invalid prediction. Does  
21 that make a prediction invalid if it understates what  
22 the actual number is?  
23 A. Well, in the specific case that you are asking  
24 about, which was the difference between the April  
25 forecast prediction of the demand shortfall and the end



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1 of season calculation of the demand shortfall, the  
2 direction on what's important there was provided by the  
3 court, and it is a legal directive not a technical  
4 directive.  
5 Q. I understand the legal directive, and I  
6 understand the legal directive in choosing a baseline.  
7 I guess my question is, is in that baseline, does it not  
8 allow for it to ever be underreported?  
9 MR. BAXTER: Objection. It calls for a legal  
10 conclusion on behalf of the witness. The witness has  
11 answered now, at least by my count, three times your  
12 question with regards essentially the same question that  
13 is being reframed, but still trying to get to the same  
14 analysis. And the answer has been the same each time.  
15 MR. ANDERSON: I'll move on. You know what, I  
16 don't think I have any further questions.  
17 Do you want to go ahead, Skyler?  
18 MR. JOHNS: Yes, is that all right? I'm a lot  
19 simpler.  
20 MR. ANDERSON: Yes.  
21 EXAMINATION  
22 QUESTIONS BY MR. JOHNS:  
23 Q. Hi, Jennifer. My name is Skyler Johns. Nice  
24 to meet you. I don't believe I have any technical  
25 questions. And some of these are just kind of follow

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1 up. So if you've already answered them, I don't mean to  
2 be redundant. I maybe missed them as I was writing  
3 questions down. It kind of goes back a little bit to  
4 the technical working group that was brought together.  
5 For this Fifth Methodology Order, is it correct that  
6 that was after a May 2022 directive from the Director?  
7 I remember you testifying about that, but was that --  
8 A. I think I read that out of Exhibit -- is it  
9 [Exhibit 4](#)?  
10 Q. Yeah, I think it was an order or something you  
11 had read.  
12 A. Yes, [Exhibit 4](#). So this says, "In a status  
13 conference on August 5th, 2022, the Director of the IDWR  
14 issued a directive to IDWR staff to convene the  
15 technical working group."  
16 Q. Yes, so I was just off a couple months. So I  
17 apologize for that. Thank you for clarifying that.  
18 Do you recall who was in charge of organizing,  
19 scheduling, making assignments for this technical  
20 working group?  
21 A. Matt Anders.  
22 Q. Matt Anders was in charge of that. Was he  
23 also in charge of extending invitations for folks to  
24 attend and participate?  
25 A. To my knowledge, I believe he was.

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1 Q. Do you recall who was invited, or is that just  
2 something Matt has? Do you recall who was invited and  
3 who actually participated in the technical working  
4 group?  
5 A. I recall some people, but I'm sure I don't  
6 recall an inclusive list of the people, no.  
7 Q. But you believe Matt would be able to answer  
8 that?  
9 A. I believe he would, yes.  
10 Q. I'll make a note of that. Thank you. Did you  
11 have any discussions with Matt about particular invitees  
12 you would like to be a part of the technical working  
13 group?  
14 A. No, I had no input on that.  
15 Q. Okay. Do you know if people from the public  
16 were allowed to participate, or was it by an invitation  
17 only thing to participate in the technical working  
18 group?  
19 A. I don't know.  
20 Q. That checks off a whole list of questions. I  
21 will just save those from Matt. So the information that  
22 was prevented during the technical working group, was  
23 that made available before April 21st, 2023?  
24 A. I don't know.  
25 Q. Do you know if it was posted on IWDR's website

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1 anywhere before April 21st, 2023?  
2 A. I don't know.  
3 Q. Do you know who would know the answer to that  
4 question?  
5 A. Matt Anders might know the answer to that  
6 question.  
7 Q. Okay. I'll make a note of that. Do you know  
8 if public comment was sought on any of the technical  
9 working group findings, or anything that was done in the  
10 technical working group?  
11 A. I'm not aware of comment outside of the  
12 comments by coalition members of the technical working  
13 group.  
14 Q. During the technical working group, did anyone  
15 ever specifically represent that the transient state  
16 would be implemented in 2023?  
17 A. I don't think that we discussed when it would  
18 be implemented.  
19 Q. And I guess I'm asking you to recall just the  
20 broader conversation. So you specifically, did you ever  
21 represent that the transient state would be implemented  
22 in 2023 during the technical working group meetings?  
23 A. No, I only presented the technical information  
24 that is in the presentations.  
25 Q. And you may have said this. But again, I have

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1 you back in May. So instead, it's since August. How  
2 long did it take I guess for you, personally, to gather  
3 and review, and formulate opinions on all the  
4 information that was put forward in the technical  
5 working group?  
6 A. Well, again, I only participated in the part  
7 that was related to this one presentation on the  
8 calculation of the curtailment priority date. I do not  
9 recall exactly how much time it took me to do the  
10 analyses that resulted in the data that I presented.  
11 Q. Was that a couple of months?  
12 A. Oh, it was less than that.  
13 Q. A couple weeks?  
14 A. I doubt it was a couple weeks.  
15 Q. Were you working on it full-time, like that  
16 was the only project you were working on, or were you  
17 working on other projects?  
18 A. I was working on other things at the same  
19 time, but...  
20 MR. JOHNS: So I think that is all the  
21 questions that I have.  
22 MR. BAXTER: Are we ready to move over to the  
23 Surface Water Coalition?  
24 ///  
25 ///

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1 EXAMINATION  
2 QUESTIONS BY MR. SIMPSON:  
3 Q. Jennifer, hi. I'm John Simpson.  
4 MR. BAXTER: Move over closer to the  
5 microphone so they can hear you online.  
6 Q. (BY MR. SIMPSON) I really have one question,  
7 and that reflects Footnote 5 of the as-applied order,  
8 where you calculated the proportionate shares of the  
9 shortfall. Do you recall that testimony?  
10 A. I recall that we discussed that.  
11 Q. I think in Footnote 5, it identifies of the  
12 75,200, that amount that is apportioned to IGWA, and  
13 then an amount that is apportioned to A & B; correct?  
14 A. Yes.  
15 Q. And through your testimony today, you've  
16 described how the A & B calculation was made. Do you  
17 recall that testimony?  
18 A. Yes.  
19 Q. So if there is others out there that are  
20 junior to December 30th, 1953, other water rights that  
21 would be subject to administration, how would they go  
22 about calculating their proportionate shortfall?  
23 A. Well, and I guess I would say, first, that I  
24 mean, in my opinion proportionate share applies to the  
25 people that have -- I mean, proportionate share in the

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1 context of these orders is a specific term that refers  
2 to the people that have approved mitigation plans.  
3 Q. Okay.  
4 A. But if your question is how could they  
5 calculate the equivalent value.  
6 Q. Right, fair enough.  
7 A. If they can -- one way they could do it is if  
8 they -- if they can determine the number of acres that  
9 are associated with their water rights, or if they are  
10 not irrigation rights, say, if they are municipal. The  
11 volume of pumping that is associated with the water  
12 rights that are junior to December 30th, 1953. One way  
13 they can do that, is they can distribute that -- in the  
14 case of acres, they can distribute those irrigated acres  
15 amongst their points of diversion.  
16 They can overlay that with a file available  
17 online that gives an estimate of the annual volume of  
18 consumptive use associated with those acres. So  
19 multiply the consumptive use, and then they would come  
20 up with a volume. And then they can overlay that with a  
21 file available online that shows the steady state  
22 response function at the near Blackfoot to Minidoka  
23 reach. And they would come up with a number that they  
24 could then divide by a number that's in the supporting  
25 files for both A & B and IGWA, that shows the total

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1 steady state impact, which is 831,000-some acre-feet.  
2 And that that would give them -- and then multiply that  
3 by the 75,200 acre-feet, and that would give them an  
4 equivalent value.  
5 Q. Very clear.  
6 A. And then, obviously, if it's a non-irrigation  
7 use, like a municipal use, then they wouldn't need to  
8 look up the consumptive use per acre. They would just  
9 take that volume times the steady state response  
10 function, and do the same thing.  
11 MR. SIMPSON: Okay. Very good. Thank you.  
12 That's all I've got.  
13 MR. FLETCHER: No questions.  
14 MR. BAXTER: Any redirect based upon John's  
15 inquiry of individual --  
16 MS. McHUGH: I don't have anything further to  
17 add. We just agree with TJ about keeping the deposition  
18 open.  
19 MR. BUDGE: This is TJ. I don't have anything  
20 further.  
21 MR. BAXTER: All right. Well, thank you very  
22 much everybody. And thank you, Colleen, for your work  
23 here today, and getting us set up, and making it so  
24 folks and everybody had no trouble.  
25 THE REPORTER: Who wants a copy of the

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1 transcript?  
 2 MS. KLAHN: I'll take a copy, Colleen, Sarah  
 3 Klahn for Pocatello.  
 4 MS. McHUGH: And the same for the coalition of  
 5 cities.  
 6 MR. BUDGE: Yeah, and the same for IGWA.  
 7 MR. JOHNS: Hey, TJ, do you want to split the  
 8 costs with Bonneville-Jefferson?  
 9 MR. BUDGE: Yeah, that's fine.  
 10 MR. SIMPSON: Just one for Mr. Fletcher and I.  
 11 (Deposition concluded at 2:56 p.m.)  
 12 (Signature requested.)  
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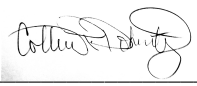
1 CERTIFICATE OF WITNESS  
 2 I, JENNIFER SUKOW, P.E., P.G., being first duly  
 3 sworn, depose and say:  
 4 That I am the witness named in the foregoing  
 5 deposition, Volume I, consisting of pages 1 through 162;  
 6 that I have read said deposition and know the contents  
 7 thereof; that the questions contained therein were  
 8 propounded to me; and that the answers contained therein  
 9 are true and correct, except for any changes that I may  
 10 have listed on the Change Sheet attached hereto:  
 11 DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 JENNIFER SUKOW, P.E., P.G.  
 15  
 16 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day  
 17 of \_\_\_\_\_, 20\_\_\_\_.  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 NAME OF NOTARY PUBLIC  
 21  
 22 NOTARY PUBLIC FOR \_\_\_\_\_  
 23 RESIDING AT \_\_\_\_\_  
 24 MY COMMISSION EXPIRES \_\_\_\_\_  
 25

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1 ERRATA SHEET FOR JENNIFER SUKOW, P.E., P.G.  
 2 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 3 Reads \_\_\_\_\_  
 4 Should Read \_\_\_\_\_  
 5  
 6 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 7 Reads \_\_\_\_\_  
 8 Should Read \_\_\_\_\_  
 9  
 10 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 11 Reads \_\_\_\_\_  
 12 Should Read \_\_\_\_\_  
 13  
 14 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 15 Reads \_\_\_\_\_  
 16 Should Read \_\_\_\_\_  
 17  
 18 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 19 Reads \_\_\_\_\_  
 20 Should Read \_\_\_\_\_  
 21  
 22 Page \_\_\_\_ Line \_\_\_\_ Reason for Change \_\_\_\_\_  
 23 Reads \_\_\_\_\_  
 24 Should Read \_\_\_\_\_  
 25 You may use another sheet if you need more room.  
 26 WITNESS SIGNATURE \_\_\_\_\_

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1 REPORTER'S CERTIFICATE  
 2 I, COLLEEN P. DOHERTY, CSR No. 345, Certified  
 3 Shorthand Reporter, certify:  
 4 That the foregoing proceedings were taken  
 5 before me at the time and place therein set forth, at  
 6 which time the witness was put under oath by me;  
 7 That the testimony and all objections made were  
 8 recorded stenographically by me and transcribed by me or  
 9 under my direction;  
 10 That the foregoing is a true and correct record  
 11 of all testimony given, to the best of my ability;  
 12 I further certify that I am not a relative or  
 13 employee of any attorney or party, nor am I financially  
 14 interested in the action.  
 15 IN WITNESS WHEREOF, I set my hand and seal this  
 16 11th day of May, 2023.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

  
 \_\_\_\_\_  
 COLLEEN P. DOHERTY, CSR 345  
 Notary Public  
 P.O. Box 2636  
 Boise, Idaho 83701-2636  
 My commission expires September 7, 2023.

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