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Irrigation District, Milner Irrigation District,
North Side Canal Company, Twin Falls Canal
Company*

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

CITY OF POCA TELLO, ET AL.,

Petitioners,

vs.

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

Respondents.

Case No. CV01-23-8258

**DECLARATION OF TRAVIS L.
THOMPSON IN SUPPORT OF
SURFACE WATER COALITION'S
MOTION TO INTERVENE**

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY AND FOR THE BENEFIT OF
A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT NO. 2, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION
DISTRICT, MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, AND TWIN FALLS CANAL
COMPANY

I, Travis L. Thompson, hereby declare and state as follows:

1. I am duly licensed to practice law in the State of Idaho and before this Court, and I am an attorney with the firm of Marten Law LLP. I am over the age of 18 and make this declaration based upon my personal knowledge. I am an attorney representing A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company in this matter.

2. Attached hereto as Exhibit A are true and correct copies of witness and exhibit lists and notices of service regarding expert reports filed in the underlying administrative proceeding on May 30, 2023 (CM-DC-2010-001) by Bonneville-Jefferson Ground Water District, Bingham Ground Water District, City of Pocatello et al., Surface Water Coalition, McCain Foods USA, Inc., Amalgamated Sugary Company, and Idaho Ground Water Appropriators, Inc. et al.

3. Attached hereto as Exhibit B is a true and correct copy of the Director's *Order Denying Motion for Reconsideration of Denial of Continuance* (CM-DC-2010-001, May 19, 2023).

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

DATED this 31st day of May, 2023.

MARTEN LAW LLP

/s/ Travis L. Thompson
Travis L. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2023, the foregoing was filed electronically using the Court's e-file system, and upon such filing the following parties were served electronically.

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Idaho Department of Water Resources
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 /s/ Travis L. Thompson
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Exhibit

A

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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'S
WITNESS AND EXHIBIT LIST**

The Bonneville-Jefferson Ground Water District (hereafter "Bonneville-Jefferson"), acting for and on behalf of its respective members, through counsel, submits its *Proposed Witness and Exhibit List* pursuant to the Director's *Scheduling Order and Order Authorizing Remote Appearance at Hearing*, issued on May 2, 2023.

EXPERT WITNESS

Bonneville-Jefferson has retained Bryce Contor, Senior Hydrologists at Rocky Mountain Environmental Associates, Inc., 482 Constitution Way STE 303, Idaho Falls, ID 83402, for the

purpose of offering expert testimony in the above-captioned matter at the June 6, 2023, hearing. Mr. Contor may testify as an expert regarding technical aspects of transient modeling and steady state modeling; the implementation of and changes to Enhanced Snake River Plain Aquifer (ESPAM); possible application of source water fraction methods in the methodology order; and the use of transient and steady-state modeling in applications of the Fifth Methodology Order. A complete statement of the expert opinions Mr. Contor may express at trial as well as the basis and reasons for his opinions are contained in his Expert Report attached to this document as Exhibit "A."

Data and other information Mr. Contor considered in forming his opinions as well as the exhibits he intends to use as a summary or in support of his opinions are referenced in his Expert Report, identified in the Exhibit List below, and are available at the Dropbox link provided to the parties.

Mr. Contor's qualifications as an expert witness in this matter, including a list of all publications authored by him in the preceding ten (10) years are contained in his Curriculum Vitae attached to this document as Exhibit "B."

A schedule of the compensation to be paid to Mr. Contor for his work and testimony in this matter is attached to this document as Exhibit "C."

A list of cases in which Mr. Contor has testified as an expert at trial or by deposition is contained in his Curriculum Vitae previously referred to as Exhibit B.

Bonneville-Jefferson reserves the right to amend or supplement this disclosure in the event the June 6, 2023, hearing date is continued.

LAY WITNESSES

Bonneville-Jefferson reserves the right to call or re-call any witness identified by any party in the above-caption matter. Bonneville-Jefferson identifies the following lay witnesses that it may call at trial:

Jay Barlogi
Manager of Twin Falls Canal Company
357 6th Ave W
Twin Falls, ID 83301

Bonneville-Jefferson reserves the right to examine or cross-examine Mr. Barlogi regarding any material identified by a party in the above-captioned matter.

Bonneville-Jefferson may call Mr. Barlogi to testify regarding the aspects of his job as the Manager of the Twin Falls Canal Company. As manager of one of the Surface Water Companies making the water delivery call against Bonneville-Jefferson and other ground water users, Mr. Barlogi has information relevant to the water call, generally, and the implementation of the Director's current and previous methodology orders. He also has information relevant to any demand shortfall his company has experienced. Further, he can speak to information his company provides the Idaho Department of Water Resources each year prior to the calculation of any demand shortfall in this water delivery call. Jay can specifically discuss the irrigated acreage and crop water needs for his company and the efficiency of his system in meeting water delivery demands. He may testify regarding diversions, measurement, and application of surface water that is the subject of the instant water delivery call. Mr. Barlogi has also participated extensively in the 2015 IGWA/SWC Settlement Agreement and can testify to matters pertaining to that agreement.

Bonneville-Jefferson reserves the right to amend or supplement this list in the event the June 6, 2023, hearing date is continued.

EXHIBIT LIST

Following are a list of exhibits Bonneville-Jefferson intends to present at trial:

Ex. No.	Ex. Name
500	Expert Report Regarding Selected Technical Aspects of the Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover, Bryce Contor
501	Fifth Amended Methodology Order
502	Snake River Plain Aquifer Model Scenario, 2006
503	Curtailment Charts
504	Staff memorandum in response to expert reports submitted for Rangen Delivery Call (In the Matter of Distribution for Water to Water Right Nos. 36-02551 and 36-07694), 2013
505	Description of the IDWR/UI Snake River Plain Aquifer Model (SRPAM), 1999
506	Enhance Snake Plain Aquifer Model Final Report, 2006
507	Etransfer 3.2 image
508	Etransfer 3.4 image
509	ESPAM 2.1 Tool
510	ESPAM 2.1 Final Report, 2013
511	Table 1 Settlement 2000-22
512	Model Calibrations 2022
513	ESHMC-White-Paper, 2007
514	Eastern Idaho Water Rights Coalition Letter, 2012
515	Determination of Source of Irrigation Water for Calibration of Eastern Snake Plain Aquifer Model Version 2, 2008
516	Deposition Transcript of Jennifer Sukow, 2023
517	Fourth Amended Methodology Order
518	April 2023 As-Applied Order
519	E22 SSRF image
520	IDWR contribution to the uncertainty white paper, 2012
521	Technical Report on ESPAM 2.0 Modeling Issues, 2012
522	Idaho Code § 42-233b
523	Ground Water Banking in Aquifers that Interact with Surface Water: Aquifer Response Functions and Double-Entry Accounting, 2009 Article
524	Deposition of Jay Barlogi, 2023
525	First Deposition of Matt Anders
526	Second Deposition of Matt Anders

Bonneville-Jefferson reserves the right to amend or supplement this list in the event the
June 6, 2023, hearing date is continued.

DATED: May 30, 2023

OLSEN TAGGART PLLC

/s/ *Skylar C. Johns*

SKYLER C. JOHNS

Dylan Anderson (ISB 9676)
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Attorney for Bingham Ground Water District

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

**BINGHAM GROUND WATER
DISTRICT'S DISCLOSURE OF
PROPOSED EXHIBITS, PROPOSED
WITNESSES, AND EXPERT REPORT
OF DARRYLL OLSEN Ph.D.**

Bingham Ground Water District (BGWD), submits this DISCLOSURE OF PROPOSED EXHIBITS, PROPOSED WITNESSES, AND EXPERT REPORT OF DARRYLL OLSEN Ph.D. in accordance with the Director's Scheduling Order dated May 2nd, 2023.

EXHIBIT LIST

At this time, Bingham Ground Water District does not expect exhibits that have not been identified by other parties, but reserves the right to provide rebuttal exhibits as needed.

POSSIBLE WITNESS LIST AND SCOPE OF TESTIMONY

1. Darryll Olsen, Ph.D
Pacific Northwest Project
3030 W. Clearwater, Ste. 205-A
Kennewick, WA
509-783-1623

Mr. Olsen may testify regarding the economic impacts of possible curtailment within a specific 5 county area covered by groundwater districts. These impacts include micro and macro impacts as outlined by his white DISCLOSURE OF PROPOSED EXHIBITS, PROPOSED WITNESSES, AND EXPERT REPORT OF DARRYL OLSEN.

paper prepared in January 2023 for Bingham Ground Water District, and his updated memo created May 30, 2023 for these proceedings. Both the memo and white paper are attached as his expert report at the end of this document.

2. Alan Jackson
Bingham Ground Water District
1725 Riverton Rd,
Blackfoot ID, 83221
208 684-9634

Mr. Jackson may testify regarding groundwater operations, as well as past experience with canal companies and Rubicon Water systems. He may testify regarding Bingham Ground Water District's participation in proceedings, settlements, meetings, or other relevant information.

Bingham Ground Water District, reserves the right to call rebuttal witnesses as needed.

EXPERT REPORTS

Attached to this document is a Memo and White Paper, both constituting the report from Darryll Olsen Ph.D, prepared for Bingham Ground Water District.

Dated May 30, 2023

Dylan Anderson Law, PLLC

_____/s/ Dylan Anderson_____
Dylan Anderson,
Attorney for Bingham Groundwater District

<p>Sarah A. Klahn, ISB #7928 Maximilian C. Bricker, ISB #12283 SOMACH SIMMONS & DUNN, P.C. 1155 Canyon St., Suite 110 Boulder, CO 80302 303-449-2834 sklahn@somachlaw.com mbricker@somachlaw.com <i>Attorneys for the City of Pocatello</i></p> <p>Robert L. Harris (ISB# 7018) HOLDEN KIDWELL HAHN & CRAPO P.O. Box 50130 Idaho Falls, ID 83405 208-523-0620 rharris@holdenlegal.com <i>Attorneys for City of Idaho Falls</i></p>	<p>Candice M. McHugh (ISB# 5908) Chris M. Bromley (ISB # 6530) MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 208-287-0991 cbromley@mchughbromley.com cmchugh@mchughbromley.com <i>Attorneys for the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell ("Coalition of Cities")</i></p>
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

<p>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</p>	<p>Docket No. CM-DC-2010-001</p> <p>CITY OF IDAHO FALLS, CITY OF POCATELLO, AND COALITION OF CITIES' JOINT DISCLOSURE OF PROPOSED WITNESSES FOR HEARING</p>
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The City of Idaho Falls, the City of Pocatello, and the Coalition of Cities¹ (collectively, "Cities") submit this *Joint Disclosure of Proposed Witnesses for Hearing* in compliance with the *Scheduling Order*.

¹ The Coalition of Cities includes the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell

I. IDENTIFICATION OF POSSIBLE WITNESSES AND SCOPE OF TESTIMONY

a. Greg Sullivan, P.E.

Spronk Water Engineers, Inc.
1000 Logan Street
Denver, CO 80203
303-861-9700

Mr. Sullivan may testify as an expert on matters related to crop evapotranspiration, irrigation methods and practices, water distribution systems, project efficiencies, projecting water demands, forecasting water supplies, conjunctive water management, groundwater modeling, the Eastern Snake Plain Aquifer, and hydraulic engineering. His expert report has been timely disclosed under the *Scheduling Order*.

b. Matthew Anders, P.G.

Idaho Department of Water Resources, Hydrology Section
322 E. Front Street
Boise, ID 83702

Mr. Anders may testify as a lay witness on matters related to the Department's preparation and issuance of the *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Fifth Methodology Order"), and the preparation, issuance, and application of the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* ("As-Applied Order").

c. Jennifer Sukow, P.E., P.G.

Idaho Department of Water Resources, Hydrology Section
322 E. Front Street
Boise, ID 83702

Ms. Sukow may testify as a lay witness on matters related to the Department's preparation and issuance of the *Fifth Methodology Order*, and preparation, issuance, and application of the *As-Applied Order*.

d. Mathew Weaver, P.E.

Deputy Director
Idaho Department of Water Resources
322 E. Front Street
Boise, ID 83702

Mr. Weaver may testify as a lay witness on matters related to the Department's preparation and issuance of the *Fifth Methodology Order*, and preparation, issuance, and application of the *As-Applied Order*.

e. Jay Barlogi

General Manager
Twin Falls Canal Company
357 6th Avenue W.
Twin Falls, ID 83301

Mr. Barlogi may testify as a lay witness on matters related to the Twin Falls Canal Company's ("TFCC") water supplies, water demands, irrigated acres, water distribution system, operations, the irrigation methods and practices of the shareholders thereof, and the *Fifth Methodology Order* and *As-Applied Order* as they pertain to TFCC.

f. Anthony Olenichak


Water Master
Water District 01
900 North Skyline Drive
Idaho Falls, ID 83402

Mr. Olenichak may testify as a lay witness on matters related to water supply forecasting and the distribution of water supplies to water users in Water District 01.

- g. Persons identified in other parties' disclosures made pursuant to the *Scheduling Order* in this case.
- h. Any witness necessary for rebuttal.

DATED this 30th day of May 2023.

SOMACH SIMMONS & DUNN

By 
Sarah A. Klahn, ISB # 7928

Attorneys for City of Pocatello

MCHUGH BROMLEY, PLLC

By /s/ Candice M. McHugh
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Chris M. Bromley (ISB # 6530)

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

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Carey, Declo, Dietrich, Gooding, Hazelton,
Heyburn, Jerome, Paul, Richfield, Rupert,
Shoshone, and Wendell ("Coalition of
Cities")*

**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

**CITY OF IDAHO FALLS, CITY
OF POCATELLO, AND
COALITION OF CITIES' JOINT
DISCLOSURE OF PROPOSED
EXHIBITS FOR HEARING**

The City of Idaho Falls, the City of Pocatello, and the Coalition of Cities¹ (collectively, "Cities") submit this *Joint Disclosure of Proposed Exhibits for Hearing* in compliance with the Director of the Idaho Department of Water Resources Department's May 2, 2023 *Scheduling Order and Order Authorizing Remote Appearance at Hearing* (p. 3), and use the exhibit numbers assigned to the City of Pocatello (300-399) rather than file separate lists which would contain multiple duplicates of exhibits.

¹ The Coalition of Cities includes the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell

Cities' Exhibit No.	Exhibit Description
	ORDERS
300	4/21/2023 Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover
301	4/21/2023 Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)
302	11/30/2022 Final Order Establishing 2022 Reasonable Carryover (Methodology Step 9)
303	8/18/2022 Order Revising July 2022 Forecast Supply (Methodology Steps 7-8)
304	7/20/2022 Order Revising April 2022 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)
305	4/20/2022 Final Order Regarding April 2022 Forecast Supply (Methodology Steps 1-3)
306	4/19/2016 Fourth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover
	DEPOSITION NOTICES & TRANSCRIPTS
307	5/4/2023 Joint Notice of Deposition Duces Tecum of Jennifer Sukow, P.E., P.G. (Sukow Depo Ex. 1)
308	5/4/2023 Joint Notice of Deposition of Matthew Anders, P.G. (Anders Depo Ex. 10)
309	5/10/2023 Deposition Transcript of Jennifer Sukow, P.E., P.G.
310	5/12/2023 Deposition Transcript of Matthew Anders, P.G., Volume 1
311	5/22/2023 Cities' Amended I.R.C.P. 30(b)(6) Notice of Taking Deposition Duces Tecum of Twin Falls Canal Company (Barlogi Ex. 20)
312	5/23/2023 GWD Notice of Taking Deposition Duces Tecum of TFCC- (Barlogi Ex 28)
313	5/25/2023 Amended Notice of Deposition of Matthew Anders, P.G.
314	5/25/2023 Deposition Transcript of Twin Falls Canal Company (Barlogi)
315	5/26/2023 Deposition Transcript of Matthew Anders, P.G., Volume 2

Cities' Exhibit No.	Exhibit Description
	DEPOSITION EXHIBITS
316	12/23/2022 IDWR 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 SWC, by Kara Ferguson & Matt Anders (Sukow Depo Ex. 4)
317	4/25/2023 Surface Water Coalition Delivery Call, Amended 5th Methodology and April 2023 As-Applied Orders, FAQs (Sukow Depo Ex. 5)
318	11/28/2022 IDWR, SWC Methodology - Calculation of Priority Dates for Curtailment of Junior Ground Water Users, Presented to the SWC Methodology Technical Working Group (Sukow Depo Ex. 6)
319	11-12/2022 Table 1 - Summary of Hindcast SWC Delivery Call Demand Shortfall Calculations 2000-2022 (Sukow Depo Ex. 7)
320	5/23/2023 Email to TJ Budge from Garrick Baxter, Subject: Request to Delineate Proportionate Shares of Mitigation Obligation (Sukow Depo Ex. 8)
321	1/2013 Enhanced Snake Plain Aquifer Model, Version 2.1, Final Report, (Sukow Depo Ex. 9)
322	1/16/2023 Spronk Water Engineers, Inc., Comments on Behalf of the Coalition of Cities and the City of Pocatello on the IDWR Recommendation SWC Methodology Update (Anders Depo Ex. 11)
323	Color Photograph of Thumb Drive Directories (Anders Depo Ex. 12)
324	2/19/2015 Proposed Modification to Method for Determining Reasonable In-Season Demand for the Surface Water Coalition (Anders Depo Ex. 13)
325	12/1/2022 Proposed Modification to Method for Determining Reasonable In-Season Demand for the Surface Water Coalition: Use of the Near Real Time METRIC (Anders Depo Ex. 14)
326	1/16/2023 Comments on 2022 IDWR Staff Recommendations Memorandum (Anders Depo Ex. 15)
327	11/17/2022 Evaluation of Method for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover: April and July Forecast Supply (Anders Depo Ex. 16)
328	12/1/2022 Proposed Modification to Method for Determining Reasonable In-Season Demand for the Surface Water Coalition: Use of Near Real Time METRIC. Presented by Ethan Geisler, Kara Ferguson, & Matt Anders (Anders Depo Ex.17)
329	IDAPA 37.03.11 Rules for Conjunctive Management of Surface and Ground Water Resources (Anders Depo Ex. 18)

Cities' Exhibit No.	Exhibit Description
330	5/24/2023 Screenshot of 2023 SWC-IGWA Legal Folders (Barlogi Ex. 21)
331	5/24/2023 Screenshot of Folders within the Deposition Folder (Barlogi Ex. 22)
332	1990-2022 Water Delivery Schedule Spreadsheets (Barlogi Ex. 23)
333	10/14/2005 Sample Amended Agreement for Sprinkler Installation (Barlogi Ex. 24)
334	5/24/2023 Twin Falls County Census Bureau Population Graph (Barlogi Ex. 25)
335	5/10/2023 SWC Data Requested by C. Brockway – (Barlogi Ex. 26)
336	5/22/2023 S. Tschohl Email Response to Brockway Request (Barlogi Ex. 27)
337	3/29/2013 A-B et al Response to 2.21.2013 Letter re Step 1 Methodology Order (Barlogi Ex. 29)
338	10/31/2022 TFCC Profit & Loss 11.2014 through 10.2022 (Barlogi Ex. 30)
339	1/26/2012 TFCC Operation Policy (Barlogi Ex. 31)
340	6/21/2022 Settlement Agreement Small Group Meeting Main Discussion Points (Anders Depo Ex. 40)
341	7/13/2022 Surface Water Coalition Steering Committee Meeting Methodology Outline v.2 (Anders Depo Ex. 41)
342	7/13/2022 Surface Water Coalition Steering Committee Meeting Speaking Outline (Revisions Methodology Outline) (Anders Depo Ex. 42)
343	9/30/2022 (9:07:27 AM) Email from G. Baxter re Methodology Order Technical Work Group (Anders Depo Ex. 43)
344	9/30/2022 (1:44:07 PM) Email from G. Baxter re Methodology Order Technical Work Group (Anders Depo Ex. 44)
345	9/30/2022 (2:38:10 PM) Email from G. Baxter re Methodology Order Technical Work Group (Anders Depo Ex. 45)
346	1/3/2023 (12:18:22 PM) Email from M. Weaver re FW: 4 th Amended Methodology Order (Anders Depo Ex. 47)
	OTHER DOCUMENTS
347	5/30/2023 Expert Report of Gregory K. Sullivan, P.E. on Behalf of the Cities of Pocatello, Idaho Falls, and the Coalition of Cities
348	City of Pocatello – Summary of Water Rights
349	City of Idaho Falls – Summary of Water Rights
350	Coalition of Cities – Summary of Water Rights
351	3/17/2023 Letter from BWCC/AFRD2 to IDWR re: Shapefile
352	3/10/2023 Marten Law Letter to IDWR re: Shapefile

Cities' Exhibit No.	Exhibit Description
353	3/2/2023 Email from Minidoka Irr. Dist. to IDWR re: Shapefile
354	2/21/2023 Email from G. Spackman FW Discussion on Amended Methodology#4
355	2/2/2023 Letter from AFRD2 to IDWR re: Shapefile
356	1/30/2023 Letter from IDWR to SWC Managers re: Annual Shapefile Submission
357	12/20/2022 (8:54 AM) Email from M. Anders re TWG Data
358	Opinion, <i>State v. Twin Falls Canal Co.</i> , 21 Idaho 410 (June 15, 1911)
359	Opinion, <i>State v. Twin Falls Land & Water Co.</i> , 37 Idaho 73 (April 2, 1923)
360	Opinion, <i>Twin Falls Land & Water Co. v Twin Falls Canal Co.</i> , 79 F.2d 431 (September 9, 1935)

DATED this 30th day of May 2023.

SOMACH SIMMONS & DUNN

By 
 Sarah A. Klahn, ISB # 7928

Attorneys for City of Pocatello

MCHUGH BROMLEY, PLLC

By /s/ Candice M. McHugh
 Candice M. McHugh (ISB# 5908)
 Chris M. Bromley (ISB # 6530)

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HOLDEN KIDWELL HAHN & CRAPO

By /s/ Robert L. Harris
 Robert L. Harris (ISB# 7018)

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Reservoir District #2 and Minidoka
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

**SURFACE WATER COALITION'S
WITNESS LIST**

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 submits the following list of witnesses for the June 6-10, 2023

hearing pursuant to the *Scheduling Order and Order Authorizing Remote Appearance at Hearing* (May 2, 2023).

Lay Witnesses

The Coalition may call any of the of the following managers for the respective irrigation districts and canal companies.

Jay Barlogi, Twin Falls Canal Company

Mr. Barlogi is expected to testify on the subjects covered in his pre-filed testimony (SWC Ex. 1) and any other matters related to the operations and water delivery by the canal company.

Justin Temple, A&B Irrigation District

Mr. Temple is expected to testify about the operations and water delivery by the irrigation district, including the delivery of surface water to certain lands within the district (SWC Ex. 2).

Kevin Lakey, American Falls Reservoir District #2

Mr. Lakey is expected to testify about the operations and water delivery by the reservoir district.

Don Terry, Burley Irrigation District

Mr. Terry is expected to testify about the operations and water delivery by the irrigation district.

Jeff Warr, Milner Irrigation District

Mr. Warr is expected to testify about the operations and water delivery by the irrigation district.

Dan Davidson, Minidoka Irrigation District

Mr. Davidson is expected to testify about the operations and water delivery by the

irrigation district.

Alan Hansten, North Side Canal Company

Mr. Hansten is expected to testify about the operations and water delivery by the canal company.

Expert Witnesses:

Dave Colvin (LRE Water)

Mr. Colvin is expected to testify about the subjects covered in the expert report he participated in (SWC Ex. 3). Mr. Colvin may also provide testimony about the Technical Working Group process related to the methodology updates that occurred during the fall/winter of 2022.

Dave Shaw (ERO Resources)

Mr. Shaw is expected to testify about the subjects covered in the expert report he participated in (SWC Ex. 4). Mr. Shaw may also provide testimony about the Technical Working Group process related to the methodology updates that occurred during the fall/winter of 2022.

Charles G. Brockway (Brockway Engineering PLLC)

Dr. Brockway is expected to testify about the subjects covered in his expert report that he participated in (SWC Ex. 4).

G. Erick Powell (Brockway Engineering PLLC)

Dr. Powell is expected to testify about the subjects covered in the expert reports that he participated in (SWC Exs. 3, 4).

The Coalition reserves the right to examine and call all individuals disclosed in other parties' disclosures of witnesses, including the Department witnesses Jennifer Sukow and Matt

Anders. The Coalition also reserves the right to call any witnesses necessary for rebuttal testimony.

DATED this 30th day of May, 2023.

MARTEN LAW LLP

/s/ Travis L. Thompson
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

/s/ W. Kent Fletcher
W. Kent Fletcher

*Attorneys for American Falls
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Reservoir District #2 and Minidoka
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

**SURFACE WATER COALITION'S
NOTICE OF SERVICE OF EXHIBITS
AND EXPERT REPORTS**

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 provides notice of service of its exhibits and expert reports on the

parties to this case pursuant to the *Scheduling Order and Order Authorizing Remote Appearance at Hearing* (May 2, 2023). Counsel emailed the following to those counsel of record listed on the certificate of service.

SWC Exhibit List

- SWC Ex. 1 - Pre-Filed Direct Testimony of Jay Barlogi
- SWC Ex. 2 - A&B Water Delivery Summary to Certain Unit B Lands (2016-2022)
- SWC Ex. 3 - Groundwater Expert Report – 2023 Methodology
- SWC Ex. 4 - SWC Expert Report on Fifth Methodology and Related Orders
- SWC Ex. 5 - TFCC with 2017 Acre Differences letter
- SWC Ex. 6 - Selected Comparison of 2017 area2
- SWC Ex. 7 - Selected Comparison of 2017 area3

DATED this 30th day of May, 2023.

MARTEN LAW LLP

/s/ Travis L. Thompson
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

/s/ W. Kent Fletcher
W. Kent Fletcher

*Attorneys for American Falls
Reservoir District #2 and Minidoka
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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
IDENTIFICATION OF WITNESSES
AND EXHIBITS**

McCain Foods USA, Inc. ("McCain") submits this *Disclosure of Proposed Witnesses for Hearing* pursuant to the *Scheduling Order*.

I. IDENTIFICATION OF POSSIBLE WITNESSES AND SCOPE OF TESTIMONY

- a. Scott King, P.E.**
HDR
300 E Mallard St, Ste 350
Boise, ID 83706
2080-383-4140

Mr. King may testify about McCain's water rights, its effort to mitigate and its option for mitigation, the difference in priority date curtailment for transient v steady state model use, the process and timelines and the timelines and process imposed in the above captioned matter.

2. IDENTIFICATION OF POSSIBLE EXHIBITS

600	McCain's Water Rights at Burley Plant
601	McCain's Petition to SWID
602	McCain's Notice of Mitigation
603	May 24, 2023 Email from Garrick Baxter to Candice McHugh
604	May 1, 2023 Letter from IDWR

Submitted this 30th day of May, 2023.

MCHUGH BROMLEY, PLLC

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

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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
AMALGAMATED SUGAR
COMPANY'S
IDENTIFICATION OF WITNESSES
AND EXHIBITS**

Amalgamated Sugar Company's ("Amalgamated") submits this *Disclosure of Proposed Witnesses for Hearing* pursuant to the *Scheduling Order*.

1. IDENTIFICATION OF POSSIBLE WITNESSES AND SCOPE OF TESTIMONY

Dean Delorey
Amalgamated Sugar Company
1951 S. Saturn Way, Suite 100
Boise, ID 83709

Mr. Delorey may testify about Amalgamated's water rights, its effort to try and mitigate and its option for mitigation, including the process imposed in the above captioned matter.

2. IDENTIFICATION OF POSSIBLE EXHIBITS

700	Amalgamated's Water Rights at Mini-Cassia Plant
701	Amalgamated's Petition to Magic Valley Ground Water District
702	Amalgamated's Notice of Mitigation
702	May 24, 2023 Email from Garrick Baxter to Candice McHugh

Submitted this 30th day of May, 2023.

MCHUGH BROMLEY, PLLC

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

Thomas J. Budge (ISB# 7465)
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elisheva@racineolson.com
Attorneys for Idaho Ground Water Appropriators, Inc.

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 Witness and
Exhibit Lists**

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, American Falls-Aberdeen Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry's Fork Ground Water District, submits the following witness and exhibit lists.

WITNESSES

1. **Sofia Sigstedt.** Sofia Sigstedt is expected to testify as to her expert report, technical aspects of the Fifth Methodology Order and the April 2023 As-Applied Order, communications with the Department's technical working group, and other matters involving the Fifth Methodology Order and the April 2023 As-Applied Order.
2. **Jaxon Higgs.** Jaxon Higgs intended to testify as to his expert report, the proportionate mitigation obligations of IGWA's member ground water districts under the April 2023 As-Applied Order, irrigated acreage within Twin Falls Canal Company, conveyance efficiency of Twin Falls Canal Company, and other matters involving the Fifth Methodology Order and the April 2023 As-Applied Order. Mr. Higgs is not able to participate in the hearing scheduled June 6-10, 2023, due to a previously scheduled

family vacation out of the country.

3. **Mathew Weaver.** Mathew Weaver is expected to testify regarding information considered by Department personnel in developing the Fifth Methodology Order and the April 2023 As-Applied Order, the Department's application of the futile call doctrine, and other matters involving the Fifth Methodology Order and the April 2023 As-Applied Order.
4. **Tony Olenichak.** Tony Olenichak is expected to testify regarding the Department's distribution of water to members of the Surface Water Coalition and the Department's application of the futile call doctrine.
5. **Jennifer Sukow.** Jennifer Sukow is expected to testify regarding information considered and technical analyses performed by Department personnel in developing the Fifth Methodology Order and the April 2023 As-Applied Order.
6. **Matt Anders.** Matt Anders is expected to testify regarding information considered and technical analyses performed by Department personnel in developing the Fifth Methodology Order and the April 2023 As-Applied Order.
7. **Kara Ferguson.** Kara Ferguson is expected to testify regarding information considered and technical analyses performed by Department personnel in developing the Fifth Methodology Order and the April 2023 As-Applied Order.
8. **Other Department Staff.** IGWA reserves the right to call any other Department staff having information considered and technical analyses performed in connection with the development of the Fifth Methodology Order and the April 2023 As-Applied Order.
9. **Jay Barlogi.** Jay Barlogi is expected to testify regarding Twin Falls Canal Company's water delivery system, conveyance efficiencies, hydropower plants served by the Company's delivery system, Company policies, and others matters involving the Company.
10. **Lynn Carlquist.** Lynn Carlquist is expected to testify regarding the consequences for IGWA member districts and their patrons of the Fifth Methodology Order and the April 2023 As-Applied Order, and other matters involving the administration of water rights under the SWC delivery call related to the Fifth Methodology Order and the April 2023 As-Applied Order.
11. **Tim Deeg.** Tim Deeg is expected to testify regarding the consequences for IGWA member districts and their patrons due to the decisions contained within the Fifth Methodology Order and the April 2023 As-Applied Order, and other matters involving the administration of water rights under the SWC delivery call related to the Fifth Methodology Order and the April 2023 As-Applied Order.
12. **Kirk Jacobs.** Kirk Jacobs is expected to testify regarding the consequences for IGWA member districts and their patrons due to the decisions contained within the Fifth Methodology Order and the April 2023 As-Applied Order, and other matters involving the administration of water rights under the SWC delivery call related to the Fifth

Methodology Order and the April 2023 As-Applied Order.

13. Any witness identified by any other party.
14. Any witness needed to authenticate any exhibit.
15. Any witness needed for rebuttal purposes.

EXHIBITS

Attached herewith as *Appendix A* is IGWA's Exhibit List. In addition, IGWA reserves the right to utilize as exhibits (a) any document listed in the exhibit list of any other party to this proceeding; (b) water right records kept by the Department in its ordinary course of business; (c) any exhibit, pleading, or order filed previously with the Department in this matter; (d) transcripts of testimony proffered previously in this matter; (e) exhibits created for illustrative purposes; (f) exhibits utilized for rebuttal purposes; (g) subsequently disclosed exhibits for which the Director approves late disclosure; and (h) documents of which the Director takes official notice per IDAPA 30.01.01.602.

DATED this 30th day of May, 2023.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

IGWA's Hearing Exhibits

#	Description
100	20150310 IGWA Comments on Draft IDWR Staff Memo
101	20150310 Pocatello Comments on Draft IDWR Staff Memo
102	20150310 SWC Comments on Draft IDWR Staff Memo
103	20150316 SWC Staff Recommendations Memo (CM-DC-2010-001)
104	20221116 SWC Delivery Call Overview
105	20221117 Forecast_Supply_SWC_TWG
106	20221119 NRT METRIC_SWC_TWG_11-17-22_with supplemental slides
107	20221119 BLY_SWC_TWG_11-16-22_with supplemental slides
108	20221119 ESPAM_SWC_TWG_11-28-22
109	20221119 Project Efficiency_SWC_TWG_11-28-22_with supplemental slides
110	20221201 NRT METRIC_SWC_TWG_12-1-22_with supplemental slides (Numbered)
111	20221209 BLY_reasonable carryover
112	20221209 NRT METRIC_SWC_TWG
113	20221214 Forecast_Supply_SWC_TWG_12-14-2022_V2 (Numbered)
114	20221221 SWC Diversions and CWN Charts
115	20221223 IDWR Preliminary Recommendations
116	20230116 Cities Comments on SWC Methodology Recommendation
117	20230116 Lynker Memo re IDWR Staff Recommendations
118	20230116 SWC Comments to IDWR re Methodology Update
119	Depo Ex. 1 - 20230504 Joint Notice of Deposition Duces Tecum - J. SUKOW
120	Depo Ex. 2 - 20230421 Fifth Amended Final Order Regarding Methodology
121	Depo Ex. 3 - 20230421 Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)
122	Depo Ex. 4 - 20221223_SWC_TWG_Summary
123	Depo Ex. 5 - 20230425 FAQ on new Methodology and SWC delivery call
124	Depo Ex. 6 - 20221119 ESPAM_SWC_TWG_11-28-22
125	Depo Ex. 7 - Hindcast_Table1_Settlement_20221221
126	Depo Ex. 8 - 20230503 Baxter email re GWD mitigation obligations
127	Depo Ex. 9 - ESPAM V.2.1 Final Report
128	Depo Ex. 10 - 20230504 Joint Notice of Deposition Duces Tecum - M. ANDERS
129	Depo Ex. 11 - 20230116 Cities Comments on SWC Methodology Recommendation
130	Depo Ex. 14 - 20221201 NRT METRIC_SWC_TWG_12-1-22_with supplemental slides (Numbered)
131	Depo Ex. 15 - 20230116 MEMORANDUM_630PM_Lynker
132	Depo Ex. 16 - 20221117 NRT METRIC_SWC_TWG_11-17-22_with supplemental slides (Numbered)
133	Depo Ex. 17 - 20221201 NRT METRIC_SWC_TWG_12-1-22_with supplemental slides (Numbered)
134	Depo Ex. 18 - CM Rules
135	Depo Ex. 19 - 20160419 Fourth Methodology Order
136	Depo Ex. 20 - Cities Amended Notice of Deposition of TFCC
137	Depo Ex. 21 - Screenshot of 2023 SWC-IGWA Legal Folders
138	Depo Ex. 22 - Screenshot of Folders within the Deposition Folder
139	Depo Ex. 23 - TFCC Water Delivery Schedule 1990 to 2022 Spreadsheets
140	Depo Ex. 24 - Amended Agreement for Sprinkler Installation
141	Depo Ex. 25 - Census Bureau Population in Twin Falls County Graph
142	Depo Ex. 26 - SWC data requested by Chuck Brockway

143	Depo Ex. 27 - Email from Sarah Tschohl to multiple parties dated 5-22-23
144	Depo Ex. 28 - GWD Depo Notice to TFCC
145	Depo Ex. 29 - Ltrs from Thompson to Spackman 2013 to 2022
146	Depo Ex. 30 - TFCC Profit and Loss 2014 to 2022
147	Depo Ex. 31 - TFCC Operating Policy
148	Depo Ex. 40 - 20220621 - Small Group Discussion Points - 4Bedke
149	Depo Ex. 41 - 2022.7.13 SWC Methodology Outline_v2
150	Depo Ex. 42 - 2022.7.13 Revisions_Methodology_Outline
151	Depo Ex. 45- GBaxter_RE_ Methodology Order Technical Work Group_20220930_3_Redacted (002)
152	Depo Ex. 46 - 2022.12.20 Anders Email re TWG Data (002)
153	Depo Ex. 47 - 2023.1.3 Email FW_ 4th Amended Methodology Order (002)
154	Depo Ex. 48 - Attmt to 1.3.23 email to M.Weaver - 20160419_SWC RevisedMethodologyLC-MA-EB-Gary-EB3
155	ESPAM21FinalReport
156	ESPAM21FinalReportAppendixA
157	ESPAM21FinalReportAppendixB
158	ESPAM21FinalReportAppendixC
159	ESPAM21FinalReportFiguresSize8.5x11
160	ESPAM21FinalReportFiguresSize11x17
161	ESPAM21FinalReportTables
162	ModelCalibration22_Final
163	ModelCalibration22_FinalAppendixA
164	CurtScen22_FinalwApp
165	ESPAM2 Recharge Tools Documentation_ Processing Steps
166	Super_FullyPop_Final
167	E22PredUnc_Final
168	E22PredUnc_FinalAppendixA
169	E22PredUnc_FinalAppendixB
170	20060428 Affidavit of Scott N. King (SWC Dist Ct Agency Record 3427)
171	20070320 Expert Report of Scott King (Irr Acres Analysis TFCC)
172	20070926 Direct Testimony of Scott King (SWC Dist Ct Agency Record 5205)
173	Exhibit 4166 TFCC Water Management Plan 1999
174	Exhibit 4166A
175	Exhibit 4167 TFCC Operation Policy
176	Exhibit 4607 TFCC Meeting 2005
177	Exhibit 4608 TFCC Meeting Minutes 2004
178	Exhibit 4610 TFCC Ditch Writer 2005
179	01-00209 SRBA SF5
180	20071107 Spronk Water Engineers Expert Rebuttal Report (SWC Dist Ct Agency Record 5371)
181	20080616 Spronk Water Engineering Expert Report (A&B ISC Agency Record Ex 301)
182	20080716 Direct Test. of Charles Brendecke (A&B Dist Ct Agency Record)
183	20080827 Rebuttal Test of Charles Brendecke (A&B ISC Agency Record Ex 460)
184	20120406 Jt Stip to Withdraw Objs TFCC
185	20221001 Budge.Baxter email string RE_ Methodology Order TWG
186	20230425 FAQ on new Methodology and SWC delivery call
187	20230425 IDWR Press Release

188	20230503 Baxter email re GWD mitigation obligations
189	20230504 Baxter emails re deposition of Weaver
190	20230504 CM-DC-2010-001 Joint Notice of Deposition Duces Tecum - M. ANDERS (00151692xD2C75)
191	CM-DC-2010-001_20150316_SWC_Staff_Recommendations_Memo
192	CM-MP-2014-007-20150123-Staff-Memo-Cities-2nd
193	CurtScen22_FinalwApp
194	Hindcast BLY v Nov Actual DS chart
195	Table1_Settlement_20221221
196	Transient State Benefits by GWD 2023
197	Attachment 1 - IGWA Proportionate Share Modeling
198	Attachment 2 - Model Cells by District
199	Figure 2-1 Sequence of IDWR Irrigated Land dataset processing
800	Figure 2-2 Example of seasonal 2002 METRIC ET within the ESPAM boundary
801	Figure 2-3 Total SWC April-Oct Diversion 1992-2021
802	Figure 2-4 Sum of Heise natural flow and storage allocation for Snake River above Milner 1992-2021
803	Figure 2-5 Reference ET for Twin Falls with both AgriMet and ETIdaho data 1992-2021
804	Figure 2-6 Growing Degree Days for Twin Falls AgriMet Site 1992-2021
805	Figure 2-7 Growing Season Precip Twin Falls Weather Station 1992-2021
806	Figure 2-8 Normal Distribution of SWC Total Diversions over POR 2000-2014
807	Figure 2-9 Normal distribution of SWC Total Diversion over POR 2000-2021
808	Figure 2-10 IDWR hindcast analysis annual carryover volumes for TFCC 1995-2022 4MO v 5MO
809	Figure 3-1 Excerpts from Ralston 2008 Fence Diagrams
810	Figure 3-2 Excerpt from Ralston 2008 geologic map
811	Figure 3-3 Tranmissivity changes ESPAM 1.1 vs 2.1 vs. 2.2
812	Figure 3-4 Specific Yield changes ESPAM 1.1 vs 2.1 vs 2,2
813	Figure 3-5 Changes in timing rate of river reach gains ESPAM 2.1 vs 2.2
814	Figure 3-6 Changes in steady state response function BF to Minidoka reach ESPAM 2.1 vs 2.2
815	Figure 3-7 Annual volume net aquifer recharge 1981 to 2018
816	Figure 3-8 Storage and Transmissivity distribution using alt METRIC processing
817	Figure 3-9 Comparison water budget components pre and post calibration using METRIC
818	Figure 3-10 Distribution of jr gw pumping curtailed under 1963 priority date
819	Figure 3-11
820	Figure 3-12
821	Figure 3-13
822	Figure 3-14
823	Figure 3-15
824	Figure 3-16
825	Table 2-1 Summary of SWC irrigated acres 2015 TWG
826	Table 2-2 Summary of irrigated acres utilized in protocol calculations
827	Table 2-3 Summary of SWC irrigated acres 2022 TWG
828	Table 2-4 BLY Alternatives and BLY Criteria
829	Table 2-5 Variables Tested in 2015 Multiple Linear Regression Models
830	Table 2-6 Variables tested in 2022 Multiple Linear Regression Models
831	Table 2-7 Maximum Projected Carryover Need Fourth MO Compared to Fifth MO
832	Table 2-8 IDWR Hindcast of April DS with BLY 2018 and Lynker Est Jr GW Curtailment

833	Table 2-9 IDWR Hindcast of Nov Actual DS based on IDWR RISD comparing TFCC acre changes
834	Table 2-10 April Reduction to FS models for natural flow available to SWC entities
835	Table 3-1 Higgs analysis on IGWA proportionate share related to reach gain benefits
836	Expert Report of Jaxon Higgs
837	Expert Report of Sofia Sigstedt

Exhibit B

**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 MOTION FOR
RECONSIDERATION OF DENIAL
OF CONTINUANCE**

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”) and 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 Continuance* requesting that the Director continue the June 6-10 evidentiary hearing “until a date in December or January 2024” Mot. for Continuance at 8.

During the April 28, 2023 prehearing conference, the Cities presented argument in support of their *Motion for Continuance*. The Idaho Ground Water Appropriators, Inc. (“IGWA”), Bonneville-Jefferson Groundwater District (“BJGD”), and McCain Foods orally moved to join the Cities’ *Motion for Continuance*. The Cities requested that the hearing be delayed approximately six months. *Id.* The Cities asserted that 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 asserted the Director should grant their

**ORDER DENYING MOTION FOR RECONSIDERATION OF DENIAL OF
CONTINUANCE—Page 1**

request because no exigency exists given the above-average snowfall this year. *Id.* at 6–8. 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. The Director stated he was, however, willing to move the hearing anytime within the first three weeks of June 2023 if all the parties agreed to move the hearing. 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.

On May 5, 2023, the Director issued an *Order Denying the Cities’ Motion for Appointment of Independent Hearing Officer and Motion for Continuance and Limiting Scope of Depositions* (“Order Denying Motion to Continue”). In the order, the Director memorialized his oral denial of the Motion for Continuance but advised that he was willing to move the hearing within the first three weeks of June 2023 if the parties filed a stipulated motion requesting the change. *Order Denying Motion to Continue* at 2. By separate order, the Director authorized Ms. McHugh to appear at the hearing remotely. Scheduling Order and Order Authorizing Remote Appearance at Hr’g at 3.

On May 5, 2023, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell along with IGWA, BJGD, and Bingham Groundwater District (collectively the “Groundwater Users”) filed a *Motion for Reconsideration of Denial of Continuance* (“Motion for Reconsideration”) asking the Director to reconsider his order denying the request to continue the hearing. In support of its Motion for Reconsideration, the Groundwater Users filed declarations from the following individuals: Candice McHugh, counsel for the Coalition of Cities, Amalgamated Sugar Company, and McCain Foods; Skyler Johns, Counsel for BJGD; Thane Kindred and Bryce Contor, experts for BJGD; and Sophia Sigstedt and Jaxon Higgs, experts for IGWA.

On May 8, 2023, the SWC filed *Surface Water Coalition’s Opposition to Groundwater Users’ Motion for Reconsideration of Order Denying Motion for Continuance* (“Objection”).

ANALYSIS

Rule 560 of the Department’s Rules of Procedure grants the presiding officer the discretion to continue a proceeding. IDAPA 37.01.01.560. Rules 710 and 711 advise that scheduling orders are interlocutory orders, and that the presiding officer has the discretion to “rescind, alter or amend any interlocutory order...”. IDAPA 37.01.01.710–711.

A. Unavailability of Counsel and Experts.

The Groundwater Users contend the June 6–10 hearing should be continued due to the unavailability of numerous witnesses and an attorney. *Motion for Reconsideration* at 3–5. The Groundwater Users further contend that a failure to continue the hearing will result in prejudice to the Groundwater Users. *Id.* at 5. To support their unavailability argument, the Groundwater Users submitted declarations from the following individuals:

Jaxon Higgs. Mr. Higgs is a hydrogeologist who provides technical analysis to IGWA. Decl. of Jaxon Higgs ¶¶ 3, 4. Mr. Higgs advises that he will be on a road trip vacation in Mexico from May 27–June 10 and will be unavailable to attend the hearing on June 6–10. *Id.* ¶ 7.

Sophia Sigstedt. Ms. Sigstedt is a hydrogeologist who provides technical analysis to IGWA. Decl. of Sophia Sigstedt ¶¶ 2, 3. Ms. Sigstedt advises she is dealing with a medical condition that prohibits her from leaving her home state of Colorado until July 10, 2023, and limits the amount of work she can perform during this time. *Id.* ¶ 15.

Candice McHugh. Ms. McHugh is an attorney representing the Coalition of Cities, Amalgamated Sugar, and McCain Foods. Decl. of Candice McHugh ¶ 2. Ms. McHugh advises that her partner Chris Bromley has an argument before the Idaho Supreme Court on June 5, and will need the week of May 29 to prepare for that argument. *Id.* Ms. McHugh advises that she will be out of state from June 4–8, and that she will be flying “virtually all day” on June 4 and June 8. *Id.* ¶ 6. Ms. McHugh contends that, given their schedules, she and Mr. Bromley will be unable to fully and fairly represent their clients if the hearing is held on June 6–10. Decl. of Candice McHugh ¶ 7.

In response, the SWC points out that the Department has already authorized Ms. McHugh to appear remotely to accommodate her travel, and that the SWC would stipulate to Ms. Sigstedt’s appearing remotely to accommodate her medical condition. *Objection* at 8–9 n.8.

The Director recognizes that some flexibility with witnesses and attorneys is necessary. Ms. McHugh has already been granted the ability to appear remotely. Mr. Bromley, Ms. McHugh’s law partner, will be available to attend on the one day that Ms. McHugh will be traveling and unavailable. Clients of the McHugh Bromley law firm will have representation during all days of the hearing. Regarding the participation by experts, the Director will authorize Ms. Sigstedt and Mr. Higgs to participate in the hearing remotely.

B. Insufficient time to prepare.

The Groundwater Users next assert that the June 6–10 hearing should be continued because they are without sufficient time to prepare, resulting in prejudice. *Motion for Reconsideration* at 5–6. To support this claim, the Groundwater Users submitted declarations from the following individuals:

Greg Sullivan. Mr. Sullivan is an expert for the Coalition of Cities and the City of Pocatello. Decl. of Greg Sullivan ¶¶ 3–5. Mr. Sullivan asserts he will be on a trip in Europe from May 17–June 3, leaving him an insufficient amount of time to prepare for a hearing. *Id.* ¶¶ 20–21.

Mr. Sullivan estimates he needs 3–5 months to prepare for the hearing. *Id.* ¶ 25.

Bryce Contor. Mr. Contor is a hydrologist who consults for BJGWD. Decl. of Bryce Contor ¶¶ 2, 6. Mr. Contor asserts he does not have time to perform an adequate technical review of the information prior to the hearing. *Id.* ¶¶ 8, 10.

Thane Kindred. Mr. Kindred is a geologist hired by BJGWD to provide technical advice and conduct a comprehensive review of the Methodology Order. Decl. of Thane Kindred ¶¶ 3, 5. Mr. Kindred advises he will not have sufficient time to conduct his review prior to the June 6–10 hearing. *Id.* ¶¶ 5, 7. Mr. Kindred further advises he does not have all the information he needs and will need at least two months to conduct his analysis. *Id.* ¶¶ 5, 7.

Sophia Sigstedt. Ms. Sigstedt is a hydrogeologist who provides technical analysis to IGWA. Decl. of Sophia Sigstedt ¶¶ 2, 3. Ms. Sigstedt advises she would like to analyze *inter alia* the number of acres irrigated by the Twin Falls Canal Company, the Forecast Supply Predictors from 1900–2022, and whether the data supports the Director’s decision to use 2018 as the Baseline Year. *Id.* ¶¶ 8–10. Ms. Sigstedt advises she lacks sufficient time to conduct her analysis prior to the hearing on June 6–10, and further advises she will need until October of 2023 to complete her work. *Id.* ¶ 14.

Skyler Johns. Mr. Johns is an attorney for BJGWD. Decl. of Skyler Johns ¶¶ 2. Mr. Johns asserts he did not receive “formal notice” from the Department that it would transition from steady-state to transient-state analysis. *Id.* ¶ 5. Mr. Johns advises that neither himself nor his experts were part of the technical working group. *Id.* Mr. Johns further advises that as of the date he signed his declaration (May 5, 2023), he did not have access to all the documents he needs to conduct a review and prepare his legal arguments. *Id.* ¶ 7. Mr. Johns contends he will need at least 6 months to prepare for the hearing, and that without such time his clients will be prejudiced. *Id.* ¶¶ 8–10.

Candice McHugh. Ms. McHugh is an attorney representing the Coalition of Cities, Amalgamated Sugar, and McCain Foods. Decl. of Candice McHugh ¶ 2. Ms. McHugh further advises that “[t]he 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, PLCC’s clients.” *Id.* ¶ 9.

The SWC responds that six weeks is plenty of time to prepare for a hearing, as evidenced by the fact that the First Methodology Order in this exact case was issued on April 7, 2010, with

an evidentiary hearing held on May 24, 2010. *Objection* at 7–8. The SWC further advises that this type of scheduling in a conjunctive management administration should surprise no one. *Id.*

While the Director recognizes that the current schedule may be a burden on the parties, it is a burden being born by all parties, both the senior water users and the junior ground water users. Plus, an accelerated schedule is not unheard of in water administrative proceedings. Furthermore, while Bonneville- Jefferson Groundwater District has decided to hire new counsel and hire its own new experts, this does not justify a continuance. BJGD has long been a party to this proceeding. The Director will not allow a junior ground water user that has long been a party to the proceeding to delay administration because new counsel and experts are hired.

The ground water users claim being surprised by changes to the Methodology Order. In the fall of 2022, 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 publicly expressed his intention to update the Fourth Methodology Order. The parties were notified that the Director was considering changes and the issues being considered by the Director. The Department distributed data, technical analysis, and recommendations to the parties’ technical experts. For some of the Department presentations, the experts submitted comments to the Department on the proposed changes. As the declarations show, the experts for IGWA and the Cities have represented those entities for many years. The experts have a familiarity with the methodology order. After considering the need of the senior water user to have timely administration versus the ground water users desire to have more time to prepare for hearing, the Director will adhere to the current schedule.

C. Current Conditions and Lack of prejudice to Groundwater Users.

In both their Motion for Continuance and Motion for Reconsideration, the Groundwater Users argue that there will be no prejudice to the senior surface water users this year because of high snowpack. The Director disagrees that high snowpack means the SWC will not be injured. While there is a good snowpack in the hills above the ESPA, snowpack is only part of the SWC’s water supply, and recharge from the aquifer is at a record low. Additionally, southern Idaho is emerging from a two-year drought, and the existing storage supply going into this irrigation season is low. Forecasters are uncertain whether the storage supply system will fill this year. The Director agrees with the SWC that the “current snowpack does not tell the whole story.” *Objection* at 9–10.

The Groundwater Users also contend that they have provided “sufficient mitigation this season so little to no injury will occur to the senior users.” *Motion for Reconsideration* at 3. Citing to IGWA’s *Notice of Ground Water District Mitigation* (“Notice of Mitigation”), the Groundwater Users argue that IGWA has “enough water to mitigate for its 2021 breach and for the predicted shortfall for the upcoming 2023 season.” *Id.* at 6. The Groundwater Users state, “[G]iven the fact that IGWA has enough water for this season to offset the entire injury forecasted to [Twin Falls Canal Company] ... the Director should consider that the junior water users ‘as a whole’ are complying with mitigation plans.” *Id.* at 7.

The problem with this argument is that IGWA's Notice of Mitigation does not say that it is agreeing to provide storage water "to offset the entire injury forecasted to [Twin Falls Canal Company]." IGWA's Notice of Mitigation states that it is acting on behalf of its member ground water districts and that IGWA is mitigating for its districts' "proportionate share" of the demand shortfall. *Notice of Mitigation* at 1-3.

But even more important, the Director is currently reviewing IGWA's Notice of Mitigation to determine whether the proposal would mitigate for the 2023 demand shortfall to the SWC. The Notice of Mitigation has several potential shortcomings:(1) Instead of relying on one single mitigation plan for all members, individual ground water districts are seeking to mitigate under different mitigation plans. This "hybridization" of mitigation plans presents serious questions about whether mixing of mitigation plans is allowable and whether there is compliance with a mitigation plan at all. (2) One of the mitigation plans, proposed in 2009 and approved in 2010, could be read to require IGWA, not individual ground water districts, to supply the entire demand shortfall to the SWC from rented storage water. The 2010 order approving the mitigation plan does not recognize a reduced mitigation obligation for IGWA based on IGWA's share of the mitigation obligation. Furthermore, the approved 2010 mitigation plan does not recognize an additional division of IGWA's obligation into fractional mitigation components for each of IGWA's members. (3) The ground water districts wanting to mitigate pursuant to the 2016 Stipulated Mitigation Plan have proportionately determined their individual obligations. But the mitigation plan does not recognize proportionate sharing of the storage water component. Further, the ground water districts are ignoring the additional requirement of an additional 30,000 acre-feet of storage to be rented for mitigation that was a component of an agreement to cure a breach of the 2016 Stipulated Mitigation Plan. (4) Jefferson-Clark Groundwater District is claiming to mitigate with storage water but none of the storage water agreements presented to the Director are in the name of Jefferson-Clark Groundwater District. (5) The Notice of Mitigation was filed by Thomas Budge on behalf of all IGWA members and purports to provide storage agreements for BJGWD and BGWD. Yet both BJWD and BGWD have recently hired independent counsel. It is unclear therefore whether IGWA's Notice of Mitigation would bind BJGWD and BGWD. Moreover, as the SWC observes, there are concerns about whether IGWA breached the 2016 Stipulated Mitigation Plan. In conclusion, it is far from clear that the IGWA's Notice of Mitigation complies with the requirements of an approved mitigation plan.

The Director has a responsibility to timely respond to injury incurred by senior water users and there should be no unnecessary delays in that process. *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.* The Department also agrees with the SWC that "[i]n practice, an untimely decision effectively becomes the decision; i.e. no decision is the decision." *Objection* at 3 (citing *Order on Plaintiffs' Motion for Summary Judgment* at 97 (*AFRD#2 et al. v. IDWR*, No. CV-2006-600 (Gooding County Dist. Ct. Idaho June 2, 2006))). The Director will not be issuing a curtailment order until after a hearing in this matter so that junior ground water users have the opportunity for a hearing before being curtailed. To ensure timely administration for predicted material injury in this current irrigation season, the Director cannot agree to continue the hearing beyond


June. The Director reiterates that he is willing to work with the parties to move the hearing to any time within the first three weeks of June 2023.¹

ORDER

Based on the forgoing discussion, IT IS HEREBY ORDERED that the Groundwater Users' *Motion for Reconsideration of Denial of Continuance* is DENIED.

IT IS FURTHER ORDERED that Sophia Sigstedt and Jaxon Higgs 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 Ms. Sigstedt and Mr. Higgs no later than May 30, 2023.

DATED this 19th day of May 2023.



Gary Spackman
Director

¹ The Groundwater Users allege that the Director has “delegated to the SWC the ability to veto a continuance to a reasonable hearing date.” *Motion for Reconsideration* at 7. This is inaccurate. Consistent with the obligation to timely respond, the Director settled on a hearing date that would provide the parties time to prepare for hearing but also allow for curtailment during this irrigation season if necessary. The Director has repeatedly expressed his willingness reset the hearing within the first three weeks of June.

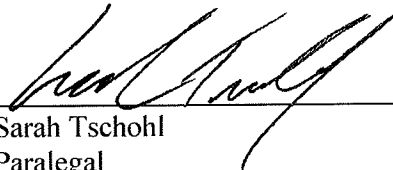
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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Paralegal