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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.

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

Case No. CV01-23-8258

IDWR Docket No. CM-DC-2010-001

**DECLARATION OF
SARAH A. KLAHN IN SUPPORT
OF PETITIONERS' RESPONSE
TO IDWR'S MOTION AND
SUPPORTING POINTS TO
VACATE SHOW CAUSE
HEARING**

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. Attached as Exhibit 1 is a true and correct copy of the May 19, 2023 email from Diane Thompson to the parties to Case No. CM-DC-2010-0001, notifying them of Petitioners’ filing of their *Complaint for Declaratory Relief, Petition for Writ of Prohibition, and Petition for Writ of Mandamus* in this matter.

4. Attached as Exhibit 2 is a true and correct copy of the following excerpt of the Transcript of the Deposition of Matthew Anders, P.E., taken on May 12, 2023:

a. Volume I, 98:12-22

5. Attached as Exhibit 3 is a true and correct copy of the following excerpts of the Transcript of the Deposition of Matthew Anders, P.E., taken on May 26, 2023:

a. Volume II, 235:7-236:14;

b. Volume II, 236:15-238:12

c. Volume II, 249:16-252:20.

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.

SOMACH SIMMONS & DUNN, P.C.



Sarah A. Klahn, ISB #7928

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st 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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Exhibit 1 to Decl. of S. Klahn

From: [Diane Thompson](#)
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Cc: [Sarah Klahn](#); [Max C. Bricker](#); [Ryan Mitchell](#); ["rdiehl@pocatello.us"](#); ["tessa@racineolson.com"](#); ["jnielsen@martenlaw.com"](#); ["sarah.tschohl@idwr.idaho.gov"](#); ["wparsons@pmt.org"](#)
Subject: Idaho District Court for the Sixth Judicial District Ada County - Filing of Complaint for Declaratory Relief, etc.
Date: Friday, May 19, 2023 6:02:00 PM

Good afternoon,

The Cities filed the attached pleadings with the Ada County District Court this afternoon. However, we understand from the Ada County clerk that we likely will not receive the stamped summons until after the close of business at the Attorney General's office.

The Cities provide the pleadings filed via the ShareFile link below to give the State of Idaho actual notice of the pendency of this action and will formally serve the AG's office on Monday.

<https://somachlaw.sharefile.com/d-s0127f9a35fc74c388d6878056d0394e1>

Enjoy your weekend,

Diane K. Thompson

Paralegal

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Exhibit 2 to Decl. of S. Klahn

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

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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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 18 Rupert, Shoshone, and Wendell:
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 4 Company, North Side Canal Company, and Milner Irrigation
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24 Also Present:
 25 Heather Rice

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 2
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 5 Sophia Sigstedt-Lynker
 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 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?

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 _____
8 Should Read _____
9
10 Page ___ Line ___ Reason for Change _____
11 Reads _____
12 Should Read _____
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14 Page ___ Line ___ Reason for Change _____
15 Reads _____
16 Should Read _____
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18 Page ___ Line ___ Reason for Change _____
19 Reads _____
20 Should Read _____
21
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.

Exhibit 3 to Decl. of S. Klahn

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)
_____)

CONTINUED DEPOSITION OF MATTHEW ANDERS, P.G.

May 26, 2023

Volume II, Pages 224 - 277

REPORTED BY:

COLLEEN P. DOHERTY, CSR 345

Notary Public

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1 CONTINUED DEPOSITION OF MATTHEW ANDERS, 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 10:02 a.m., on May
 5 26, 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.
 8 APPEARANCES:
 9 For the City of Pocatello:
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 11 BY MS. SARAH A. KLAHN (Present Remotely)
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 15 For the Cities of Bliss, Burley, Carey, Declo, Dietrich,
 16 Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield,
 17 Rupert, Shoshone, and Wendell:
 18 MCHUGH BROMLEY, PLLC
 19 BY MS. CANDICE M. MCHUGH (Present Remotely)
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 21 Jay Barlogi
 22 Erick Powell
 23 Max Bricker
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1 MATTHEW ANDERS, 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 EXAMINATION
 5 QUESTIONS BY MS. KLAHN:
 6 Q. Good morning, Matt. My name is Sarah Klahn.
 7 I represent the City of Pocatello. We're on Day 2 of
 8 the deposition, of your deposition in this matter.
 9 MS. KLAHN: Colleen, do you have all of the
 10 exhibits sitting there?
 11 THE REPORTER: Yes.
 12 (Exhibit 2 referenced.)
 13 MS. KLAHN: Could you hand Mr. Anders Exhibit
 14 2, which is the Fifth Methodology Order?
 15 THE WITNESS: Yes, I have it.
 16 Q. (BY MS. KLAHN) Okay. The last time we had
 17 quite a lot of discussion about the acres that are
 18 incorporated into the methodology order. And I'm
 19 looking specifically at paragraph 22, which is on page
 20 10 of Exhibit 2.
 21 A. Yes, I'm there.
 22 Q. One thing we didn't talk about, I mean, do you
 23 recall that the testimony you gave last time when we
 24 talked about the acres?
 25 A. I do.

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1 Q. Could you describe how the acres are used in
 2 determining any of the demand --
 3 A. Okay.
 4 Q. -- pieces of the methodology order?
 5 A. Sure. So we take the acres and -- I should
 6 back up. We first calculate the crop water need. We
 7 take ET. We adjust it for precipitation. And then we
 8 also calculate the crop mix, which is the percentage of
 9 each crop type for each Surface Water Coalition member.
 10 And then we multiply that, the crop water need by the
 11 acreage for each crop and by each member.
 12 Q. But after you do that calculation, if the crop
 13 water need is lower than the diversions associated with
 14 the baseline year, don't you just use the baseline year?
 15 A. Could you say that again?
 16 Q. Sure. After you do the calculation you just
 17 described for me for crop water need, if the crop water
 18 need value you derive is lower than the diversions
 19 associated with the baseline year, don't you just use
 20 the baseline year diversions, instead of the crop water
 21 need calculated?
 22 A. I think what you are talking about is in the
 23 calculator. I don't remember on that. I remember -- I
 24 think I know what you're talking about on the calculator
 25 where we calculated over by each milestone. But I don't

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1 remember if we used the demand if the crop water need is
 2 slower -- or lower. Sorry.
 3 Q. So if a particular canal company's acreage
 4 changes, if let's say the acreage goes up. So for
 5 whatever reason the Department accepts the information
 6 submitted by Canal Company X. The acres are larger than
 7 they were in the past. What impact does higher acres
 8 have on the calculation of the crop water need?
 9 A. Higher acres would calculate -- would increase
 10 the reasonable in-season demand, which is the crop water
 11 need divided by the project efficiency. So as we're
 12 calculating the crop water need and increase in acres
 13 will increase that as well.
 14 Q. So by the same token, if the Canal Company X
 15 submits information that shows less fewer acres used
 16 than in the past, what will be the impact on
 17 determination of crop water need?
 18 A. It will go down. Assuming, I guess in both
 19 cases, assuming everything is equal, other than just the
 20 change in acres that you suggested.
 21 Q. Okay.
 22 A. Because you could have less acres or more
 23 water intensive crops, and it could actually go up. But
 24 if you kept everything else the same, and we're just
 25 adjusting acres, that's what would happen.

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1 Q. So at any point, and I think you might have
 2 answered this before, but let me just ask it to kind of
 3 close the loop on this series of questions. At any
 4 point when you are looking at the inputs to the crop
 5 water need calculation, do you ever go back and look at
 6 the decreed place of use as part of the check on the
 7 acres that are being claimed?
 8 A. I think, if I understand it correctly, I think
 9 that is when we are doing our initial, or we did our
 10 initial check on these permissible places of use, and we
 11 take out any acres that are outside of that.
 12 Q. So that would be part of the initial review of
 13 the data before you go into this crop water need
 14 calculation; is that right?
 15 A. Yeah, we don't -- those shapefiles that we
 16 have, we did that back in 2014, and we're not getting
 17 new shapefiles. So we don't do that every year except
 18 for that analysis, except for Minidoka -- or I guess
 19 anybody that submits a new shapefile, then we analyze
 20 it in that way. The only one that -- the only company
 21 that's been submitting on a regular basis is Minidoka.
 22 So normally that's the only one we're doing.
 23 Q. So if the acres change, go up or down, and
 24 that's what dictates the reasonable in-season demand,
 25 why do you need a baseline year?

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1 A. At the beginning of the year, we don't have
 2 any crop water need. We're using baseline year to
 3 forecast what demand will be. So in April, it is what
 4 we think the demand, and the crop water need, and the
 5 reasonable in-season demand is going to be for the
 6 entire season. We only use the baseline year for the
 7 portion of the season that we don't know.
 8 So in July, we use the crop water need from
 9 April through June. But for the rest of the year, the
 10 June -- or the July through September, October time
 11 frame, we're using the baseline year. So as you
 12 progress through the season, the baseline year has less
 13 of an effect on the demand shortfall.
 14 Q. So why can't you just use the crop water need
 15 in April if you have the acres and the crop mix? Why
 16 have a baseline year?
 17 A. Could you repeat the first portion of that
 18 question?
 19 Q. So why can't you just use your calculated crop
 20 water need in April? You have the acres. You know the
 21 crop mix. Why do you need a baseline year in April?
 22 A. Because when we do the April order, that is
 23 basically the first two weeks of April. We don't have
 24 any crop water need yet to use during that time. We
 25 start the first week of April.

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1 Q. But you know generally what the crop mix is;
 2 right? I mean that's something you track?
 3 A. Yes, we have to use the crop mix from the
 4 previous year. So we do know the crop mix. But we
 5 don't know the crop water need at that point, because
 6 that comes from ET.
 7 Q. Were you aware that the shapefile submitted by
 8 Twin Falls Canal Company has not been updated since
 9 2013?
 10 A. Yes.
 11 Q. So what's the point of asking for a shapefile
 12 for current acres if the shapefile is ten years old?
 13 MR. BAXTER: Objection. It calls for a legal
 14 conclusion.
 15 Mr. Anders, if you --
 16 MS. KLAHN: I don't think so. I'm asking
 17 technically. The last time he talked quite a lot about
 18 this kind of stuff.
 19 MR. BAXTER: Objection. It calls for a legal
 20 conclusion.
 21 Mr. Anders, if you know the answer, you can go
 22 ahead and answer it.
 23 THE WITNESS: Could you repeat the question.
 24 Q. (BY MS. KLAHN) Why ask for shapefiles every
 25 year if you are not going to require the entity to

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1 maintain current irrigated acres in the shapefile?
 2 A. So I think we allow them, or there is two
 3 options that they have. They could submit a shapefile,
 4 or they can submit a letter that says their acres from
 5 the previous year haven't changed by more than five
 6 percent.
 7 Q. But I'm saying based on what I understood from
 8 the testimony of Mr. Barlogi yesterday, they don't do
 9 any evaluation. They just send you a shapefile. They
 10 say, okay. It's the same. We're pretty sure it's the
 11 same?
 12 A. I don't think they even send us a shapefile.
 13 We just have that shapefile from 2013. They just send a
 14 letter.
 15 Q. So from the standpoint of being the
 16 administrators who are supposed to be distributing water
 17 to seniors on the acres that are actually being
 18 irrigated, why is that acceptable from a technical
 19 perspective? How do you know that you're actually
 20 calculating demand when you don't actually know what the
 21 acres are?
 22 MR. BAXTER: Objection; a compound question.
 23 Q. (BY MS. KLAHN) You can answer it.
 24 MR. BAXTER: If you understand the question,
 25 you can answer it, Mr. Anders.

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1 THE WITNESS: Those -- that's the best acres
 2 that we have at that point. We --
 3 Q. (BY MS. KLAHN) So --
 4 A. Go ahead.
 5 Q. I'm sorry. Go ahead. I didn't mean to
 6 interrupt you.
 7 A. No, I -- we, from a technical standpoint, we
 8 would like better data, but that is the best data that
 9 we have.
 10 Q. And last time we talked about how the
 11 Department has insufficient resources to do its own
 12 evaluation of acreage for the Surface Water Coalition;
 13 is that right?
 14 MR. BAXTER: Objection. It mischaracterizes
 15 previous testimony.
 16 Q. (BY MS. KLAHN) Well, characterize it however
 17 you want. That was my understanding. Correct me.
 18 A. Could you repeat the question?
 19 Q. Last time we talked about how the Department
 20 has insufficient resources to do its own evaluation of
 21 irrigated acreage for the Surface Water Coalition lands.
 22 If that's not a correct characterization, tell me what
 23 you meant?
 24 A. I think that at this point, yes, we haven't
 25 invested or dedicated the resources to get it to where

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1 we would like it to be, which is something timely and
 2 accurate.
 3 Q. And you haven't insisted that the seniors
 4 provide current acreage; correct?
 5 A. I think the word "insisted," we have not
 6 insisted.
 7 Q. And to the extent that there is available
 8 information that the juniors could develop to provide
 9 accurate acres, is that the sort of thing that the
 10 Department would consider?
 11 A. Yeah, I think we would consider any data that
 12 we receive.
 13 Q. So from the standpoint of our discussion of
 14 acreage, I just want to make sure I'm clear. There is a
 15 component of the crop water need for the adjustments
 16 later in the season that requires acreage. But at the
 17 April determination, acreage is not relevant to the
 18 Department's calculation of whether or not there is a
 19 shortage; is that right?
 20 A. We just use the forecast supply and the
 21 baseline year, yes, there is no acreage calculation
 22 there in the April order.
 23 Q. Mr. Anders, who have you talked to about this
 24 deposition since we met last time?
 25 A. I talked to legal counsel. I talked to other

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1 staff in IDWR just generally, how did it go, what did
 2 they ask. I talked to Kara Ferguson. I think I talked
 3 to Sean Vincent. I think Mat Weaver stopped by and
 4 asked. But generally, they were just informal, how did
 5 it go? What were they interested in knowing? What were
 6 they interested in you talking about?
 7 Q. Did you prepare for today?
 8 A. Yes.
 9 Q. How did you prepare?
 10 A. I read through the transcript from the
 11 deposition two weeks ago as I was requested for errors
 12 or anything. I reviewed my notes that I prepared, which
 13 was distributed to the parties. I reviewed the orders a
 14 little bit. That's about all.
 15 Q. Did you talk with legal counsel?
 16 A. Yeah.
 17 Q. Why did you review the orders?
 18 A. Just to refresh my memory. The Fifth
 19 Methodology Order is very long, and in places it's
 20 complicated. Just to refresh my memory so that I
 21 remembered kind of the pieces that we talk about in the
 22 order. And the same with the as-applied is relatively
 23 short compared to the Fifth Methodology. But just to
 24 remind myself of what we talked about in there.
 25 Q. When you reviewed the transcript from two

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1 weeks ago, did you find any answers to questions that
 2 you gave that you disagree with now?
 3 A. I did as I went through preparing things for
 4 discovery, and then read that transcript. I determined
 5 that I was inaccurate about the first review that I
 6 referred to in the deposition as the 2021 review. And I
 7 think I talked to you about it. And I think I talked to
 8 TJ about it.
 9 Q. And how were you inaccurate in your testimony
 10 on May 12th on that topic?
 11 A. So the questioning that I remember was that
 12 when did you start working on reviewing the methodology
 13 for a possible amendment to the Fourth Methodology. And
 14 I stated at that time that I thought we started in
 15 August or, you know, late 2021, August, sometime around
 16 there.
 17 In doing the discovery, I started looking at
 18 file dates, and, you know, when we were doing some of
 19 this. And I determined that we started talking about a
 20 review baseline year and forecast supply in around the
 21 time that we did the April order in 2020. And it really
 22 was focusing on Box Canyon and was that, you know, the
 23 regressions for Twin Falls Canal Company working
 24 correctly or the way we thought they were. And then was
 25 the baseline years still performing the way we wanted to

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1 crossing the line here that you are asking specific
 2 questions as to the Director's deliberative process on
 3 legal and policy issues.
 4 And so, Matt, I'm going to instruct you not to
 5 answer the question because it gets to the Director's
 6 deliberative process, and is inconsistent with the
 7 Director's order limiting the scope of depositions in
 8 this matter.
 9 The next question, Sarah, if we could.
 10 MS. KLAHN: Yes, let's let Colleen give the
 11 remainder of the exhibits to Matt and Garrick.
 12 (Exhibit 40 marked.)
 13 Q. (BY MS. KLAHN) So could you take a look at
 14 Exhibit 40, Matt?
 15 A. Yep, I have Exhibit 40.
 16 Q. Okay. I'll represent to you that this Exhibit
 17 40 came from an email. It was an attachment to an email
 18 from Mat Weaver. And I have some questions about it.
 19 But first of all, I want you to please take a look at
 20 it. And let me know if you've ever seen it?
 21 A. I don't know that I've seen it in this form
 22 with the red and the black. I think this is the talking
 23 points possibly a press release. I don't -- I did not
 24 edit it.
 25 Q. The title is "Settlement Agreement Small Group

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1 Meeting." What settlement does this refer to?
 2 A. Sorry. I totally -- my answer before was
 3 inaccurate. I thought this was the discussion points
 4 just on the press release that we made for the Fifth
 5 Amended Methodology Order. My apologies there.
 6 Q. That's okay.
 7 A. Could you repeat the question?
 8 Q. Yeah. The title is "Settlement Agreement
 9 Small Group Meeting, Main Discussion Points."
 10 A. Okay.
 11 Q. What settlement agreement does this refer to?
 12 A. I wasn't involved. I assume this is the
 13 settlement agreement for the Surface Water Coalition
 14 between IGWA and the Surface Water Coalition, but I
 15 don't -- I'm not positive on that.
 16 Q. Would you turn to the last page?
 17 A. Yep.
 18 Q. There is some red font there at the very
 19 bottom, the words, the two paragraphs start after the
 20 word "Scott." And I believe that's Lieutenant Governor
 21 Scott Bedke, that's who that's being addressed to. If
 22 you go down to the last paragraph. Could you read that,
 23 please, just read it into the record?
 24 A. On our version, it's on two pages; is that
 25 correct? The one where it says, "One component"?

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1 Q. It's on two pages?
 2 A. Yeah, it's on the second -- it starts on the
 3 second to the last page. And you originally said "on
 4 the last page." So I'm just making sure --
 5 Q. It may be because of just when we added the
 6 exhibit numbers, it sort of scooted some things down.
 7 A. Okay.
 8 Q. So it says "Scott," and then there is two
 9 paragraphs regardless of which page it's on; is that
 10 right?
 11 A. Yes, it is. And the second one starts with
 12 the "One component not described"?
 13 Q. Yes.
 14 A. Okay. You want me to read that.
 15 Q. Yes, please.
 16 A. "One component not described in the
 17 methodology is the historical practice of running the
 18 ESPAM in steady state to establish the priority
 19 curtailment date. In Idaho, it is settled law that
 20 mitigation activities must mitigate for material injury
 21 in time, location, and quantity. Does IDWR's current
 22 state method, comply with the timing component of injury
 23 determination and mitigation? IDWR is reconsidering
 24 this issue and it could have very large implications on
 25 the methodology and mitigation. This issue is one to

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1 keep in your back pocket for now."
 2 Q. So was the decision made to impose the
 3 transient modeling approach after the negotiations
 4 between the Surface Water Coalition and IGWA broke down?
 5 A. I think that decision was being considered
 6 through the fall at least. I think the decision was,
 7 you know, it finally was made after in the January,
 8 February time frame when we started editing the order.
 9 Q. I have a dog here, who has an opinion about
 10 it. Sorry about that.
 11 Do you know what this message means about
 12 "keeping the issue in your back pocket for now"?
 13 A. I do not.
 14 Q. Who would be the best person to ask about the
 15 information in this document?
 16 A. I don't know.
 17 Q. Well, it was on an email from Mat Weaver.
 18 Would you expect Mat Weaver might know something about
 19 it?
 20 A. If it was on his email, I would assume.
 21 (Exhibit 41 marked.)
 22 Q. (BY MS. KLAHN) I would like you to turn to
 23 Exhibit 41?
 24 A. Okay. I have it.
 25 Q. Take a look at Exhibit 41, which is titled

REPORTER'S CERTIFICATE

1
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 30th day of May, 2023.

17
18
19 

20
21 COLLEEN P. DOHERTY, CSR 345
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires September 7, 2023.