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Attorney for Bingham Groundwater District

**DISTRICT COURT OF THE STATE OF IDAHO
FOURTH JUDICIAL DISTRICT
ADA COUNTY**

IDAHO GROUND WATER APPROPRIATORS,
INC., BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT, AND BINGHAM
GROUND WATER DISTRICT,

Petitioners,

vs.

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

Respondents.

Case No. CV01-23-08187

**Declaration of Dylan Anderson
In Support of Ground Water District's
Motion to Compel**

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

I, DYLAN ANDERSON, make this declaration in support of *Ground Water Districts'*
Motion to Compel filed herewith, and declare the following:

1. I am over the age of (18) and competent to testify in this matter. I make this declaration based upon my own personal knowledge unless otherwise stated.
2. I am an attorney for Bingham Groundwater District in the above-captioned matter before the Idaho Department of Water Resources, IDWR Docket No. CM-DC-2010-001, and I have personal knowledge of the matter involved in these legal proceedings.
3. The Department issued a *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* issued April 21, 2023 (“*Scheduling Order*”) and an *Order Denying the Cities’ Motion for Appointment of Independent Hearing Officer and Motion for Continuance and Limiting Scope of Depositions* issued May 5, 2023 (“*Order Limiting Discovery*”)
4. Although the Scheduling Order authorized immediate discovery without any defined limitations, the Discovery Order limited depositions to Matthew Anders and Jennifer Sukow, and precluded any questions “about the Director’s deliberative process related to legal and policy considerations.”
5. I was present at the depositions of Department staff members Jennifer Sukow and Matthew Anders on May 8 and 10, 2023, respectively. The Department’s counsel, Garrick Baxter, instructed the deponents not to answer many of the questions asked on the basis that their answers may relate to the Director’s deliberative process. Mr. Baxter relied on the *Order Limiting Discovery* as the basis for this instruction.
6. I, along with the attorneys for IGWA, Bonneville-Jefferson Ground Water District, Pocatello, Idaho Falls, and the Coalition of Cities (collectively, the “Groundwater Users”), discussed with Mr. Baxter our view that instructing the deponents to not answer such questions was improper. Conversations concerning this dispute were held both on and off the deposition record.
7. Although I believe the conversations at depositions satisfy the meet and confer requirement of I.R.C.P. 37, counsel for the Groundwater Users determined it would be prudent to meet and confer again with Mr. Baxter to ensure compliance with I.R.C.P. 37.
8. On May 15, 2023, at roughly 3:00 p.m., I reached out to Mr. Baxter on behalf of the Groundwater Users and left a voicemail stating my desire to meet and confer regarding issues related to discovery. Mr. Baxter returned my call just after 8:00 a.m. May 16, 2023. I discussed with Mr. Baxter our concerns and stated that the call was meant to satisfy the meet and confer requirement of I.R.C.P. 37. However, we were unable to resolve our discovery dispute.

9. I conferred with Thomas J. Budge, attorney for IGWA, regarding the outcome of my discussion with Mr. Baxter.

10. Mr. Baxter sent an email to counsel to the Groundwater Users on May 16, 2023, to confirm that the Department was maintaining its position on the discovery dispute. A true and correct copy of that email, along with a response from Mr. Budge, is attached as Exhibit A.

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


Dated this 19th day of May, 2023



Dylan Anderson
*Attorney for Bingham Groundwater
District*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:


Thomas J. Budge

Clerk of the Court Jerome County District Court 233 West Main Street Jerome, ID 83338	iCourt
Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Department of Water Resources 322 E Front St. Boise, ID 83720-0098	gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov file@idwr.idaho.gov
Dylan Anderson DYLAN ANDERSON LAW PO Box 35 Rexburg, Idaho 83440	dylan@dylanandersonlaw.com
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC 1449 E 17th St, Ste A PO Box 3005 Idaho Falls, ID 83403	johns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
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W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org

<p>Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706</p>	<p>kathleenmarion.carr@sol.doi.gov</p>
<p>David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202</p>	<p>david.gehlert@usdoj.gov</p>
<p>Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234</p>	<p>mhoward@usbr.gov</p>
<p>Sarah A Klahn Somach Simmons & Dunn 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p>sklahn@somachlaw.com dthompson@somachlaw.com</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83205</p>	<p>rdiehl@pocatello.us</p>
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p>cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338</p>	<p>rewilliams@wmlattys.com</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405</p>	<p>rharris@holdenlegal.com</p>

<p>Randall D. Fife City Attorney, City of Idaho Falls P.O. Box 50220 Idaho Falls, ID 83405</p>	<p>rfife@idahofallsidaho.gov</p>
<p>Corey Skinner IDWR-Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033</p>	<p>corey.skinner@idwr.idaho.gov</p>
<p>Tony Olenichak IDWR-Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402</p>	<p>Tony.Olenichak@idwr.idaho.gov</p>
<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>

Exhibit A

From: [TJ Budge](#)
To: [Baxter, Garrick](#)
Cc: [Wood, Pete](#); [Jenkins, Megan](#); [Sarah A Klahn](#); [Travis L. Thompson](#); [Tschohl, Sarah](#); [John K. Simpson](#); [Jess Nielsen](#); [wkf@pmt.org](#); [Elisheva Patterson](#); ["David W. Gehlert \(david.gehlert@usdoj.gov\)"](#); [Matt J Howard](#); [Diane Thompson](#); [Diehl, Rich](#); [Candice McHugh](#); [Chris Bromley](#); [Rob Williams \(rewilliams@wmlattys.com\)](#); [Robert L Harris](#); [rfife@idahofallsidaho.gov](#); [sjohns@olsentaggart.com](#); [nolsen@olsentaggart.com](#); [staggart@olsentaggart.com](#); [Dylan Anderson](#); [Olenichak, Tony](#); [Skinner, Corey](#); ["William Parsons"](#)
Subject: RE: IRCP 30(b)(6) Notice of Deposition
Date: Tuesday, May 16, 2023 5:18:00 PM
Attachments: [image001.png](#)

Garrick,

Thanks for the email. As we discussed during the depositions, we disagree that the Director has authority to prohibit discovery of his deliberative process. Moreover, legal conclusions must be based on factual information, and we clearly have a right to discover all of the information the Director considered in developing the Fifth Methodology Order. The Director's orders, coupled with the Director's refusal to honor the Rule 30(b)(6) deposition notice and your instructions to Jennifer Sukow and Matt Anders to not answer questions, have prevented us from discovering all of the information the Director considered.

We understand that you interpret the Director's authorities differently. We asked Dylan Anderson to reach out to you to "meet and confer" pursuant to I.R.C.P. 37, which I understand he did this morning. Dylan reported that your meeting was not successful in resolving our disagreement over the scope of discovery. Thank you for taking the time to discuss this with Dylan.

On a related note, we are anxiously awaiting a decision on the Motion for Reconsideration filed May 5th. Given the compressed hearing schedule we were anticipating a decision before now. How soon can we expect that?

Thanks,

T.J. Budge

RACINE OLSON

201 E. Center St. | P.O. Box 1391 | Pocatello, Idaho 83204

Office: (208) 232-6101 | Direct: (208) 478-3467 | Cell: (208) 705-0826 | racineolson.com

Assistant: Tessa Sparrow | Direct: (208) 478-3444 | tessa@racineolson.com

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From: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>

Sent: Tuesday, May 16, 2023 7:36 AM

To: TJ Budge <tj@racineolson.com>

Cc: Spackman, Gary <Gary.Spackman@idwr.idaho.gov>; Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>; Wood, Pete <Pete.Wood@idwr.idaho.gov>; Jenkins, Megan

<Megan.Jenkins@idwr.idaho.gov>; Sarah A Klahn <sklahn@somachlaw.com>; Travis L. Thompson <tthompson@martenlaw.com>; Tschohl, Sarah <Sarah.Tschohl@idwr.idaho.gov>; John K. Simpson <jsimpson@martenlaw.com>; Jess Nielsen <jnielsen@martenlaw.com>; wkf@pmt.org; Elisheva Patterson <elisheva@racineolson.com>; 'David W. Gehlert (david.gehlert@usdoj.gov)' <david.gehlert@usdoj.gov>; Matt J Howard <mhoward@usbr.gov>; Diane Thompson <dthompson@somachlaw.com>; Diehl, Rich <rdiehl@pocatello.us>; Candice McHugh <cmchugh@mchughbromley.com>; Chris Bromley <cbromley@mchughbromley.com>; Rob Williams (rewilliams@wmlattys.com) <rewilliams@wmlattys.com>; Robert L Harris <rharris@holdenlegal.com>; rfife@idahofallsidaho.gov; sjohns@olsentaggart.com; nolsen@olsentaggart.com; staggart@olsentaggart.com; Dylan Anderson <dylan@dylanandersonlaw.com>; Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>; Skinner, Corey <Corey.Skinner@idwr.idaho.gov>; 'William Parsons' <wparsons@pmt.org>

Subject: RE: IRCP 30(b)(6) Notice of Deposition

TJ,

I wanted to follow up with you to make sure there was no confusion regarding my response to your question on Friday regarding the ground water users' IRCP 30(b)(6) deposition notice. The Director issued an order on May 2, 2023, identifying Matt Anders and Jennifer Sukow as the witnesses that will testify on behalf of the Department. They are also the individuals designated by the Director to be deposed on behalf of the Department in response to the ground water users' IRCP 30(b)(6) deposition notice. No other employees were being identified to testify in response to the deposition notice.

Furthermore, I believe it is important to make a record regarding the issues identified and requests regarding documents in the IRCP 30(b)(6) notice. In his May 2, 2023 Order, the Director limited the scope of the depositions in this proceeding, ordering that "the scope of any deposition of a Department employee will preclude questions regarding the Director's deliberative process on legal and policy considerations." Also, at our April 28 status conference, the Director stated that this is an evidentiary hearing and that he is making employees available to testify regarding evidentiary facts and data. Regarding the issues you identified in the IRCP 30(b)(6) notices for examination, the first five issues identified are issues related to legal conclusions which Department employees are not qualified to testify to, so no employees were identified to respond to those issues. With regards to issue 6, Jennifer Sukow is the employee that can testify regarding the change from steady state to transient modeling, and in fact testified extensively on this issue at her deposition. As to issue 7, Matt Anders is the employee that can testify regarding the technical working group and he in fact testified on this issue at his deposition. As to issue 8, issues of non-compliance by IGWA are outside the scope of this proceeding. Compliance with a mitigation plan is a separate administrative proceeding in a separate docket – Docket No. CM MP 2016-001. Moreover, non-compliance with a mitigation plan goes beyond the facts and data related to the amendment of the 5th methodology order so no employees were identified with regards to this issue. Regarding the documents you identified in the Notice, the Documents listed are also listed in the ground water users' *First Set of Request for Production to IDWR; Or Alternatively, Request for Public Records*. The Department is still in the process of gathering the relevant documents. We have left open the depositions of Jennifer and Matt so you will still have the opportunity to depose them further if you have additional questions after receiving the documents.



Garrick Baxter | Lead Deputy Attorney General

Idaho Department of Water Resources | Energy and Natural Resources Division

Office of the Attorney General | State of Idaho

208-287-4811 | ag.idaho.gov

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