

**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 )	Docket No. CM-DC-2010-001
THE BENEFIT OF A&B IRRIGATION DISTRICT, )	
AMERICAN FALLS RESERVOIR DISTRICT #2, )	<b>ORDER DENYING IGWA'S</b>
BURLEY IRRIGATION DISTRICT, MILNER )	<b>REQUEST FOR STAY AND/</b>
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )	<b>OR EXTENSION OF TIME;</b>
DISTRICT, NORTH SIDE CANAL COMPANY, )	<b>ORDER GRANTING REQUEST</b>
AND TWIN FALLS CANAL COMPANY )	<b>FOR RECONSIDERATION AND</b>
)	<b>HEARING; ORDER</b>
)	<b>AUTHORIZING DISCOVERY,</b>
)	<b>IN PART; and NOTICE OF</b>
)	<b>HEARING</b>
)	

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On May 6, 2010, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed its *Motion for Reconsideration, Motion for Stay, Motion to Conduct Discovery, Motion for Immediate Action, and Request for Hearing* ("Motion") with the Director of the Department of Water Resources ("Director" or "Department"). In this order, the Director will respond to each request.

**Request for Stay and/or Extension of Time**

On April 29, 2010, the Director issued his *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)* ("April Forecast Supply Order"). In the April Forecast Supply Order, the Director found that certain members of the Surface Water Coalition ("SWC") were likely to suffer material injury during the 2010 irrigation season and required IGWA to provide evidence, to the satisfaction of the Director, that IGWA had secured the necessary volume of water to mitigate for the predicted material injury. The April Forecast Supply Order stated that, by May 13, 2010, if IGWA could not demonstrate that it had secured the required volume of water, in whole or in part, the Director would issue an order curtailing junior ground water rights. IGWA requests that the Director stay enforcement of this action until a hearing is held and a final order is entered on the Director's April 8, 2010 *Final Order Regarding Methodology for Determining Reasonable In-Season Demand and Reasonable Carryover* ("Methodology Order") and IGWA's mitigation plan for the SWC.

The Methodology Order established deadlines for the Director and the parties to follow in order to provide certainty regarding water supply at the start of the irrigation season. The April

Forecast Supply Order applied Steps 3 and 4 of the Methodology Order (*see* page 34) and predicted a demand shortfall of 84,300 acre-feet to certain members of the SWC. It is incumbent upon IGWA to provide evidence, to the satisfaction of the Director, by May 13, 2010, regarding the amount of water secured to mitigate for material injury to members of the SWC. Therefore, the Director will not grant IGWA's request for stay, nor will the Director grant IGWA's request to extend the May 13, 2010 deadline into the future.

### **Request for Reconsideration and Request for Hearing**

The April Forecast Supply Order provided for reconsideration and a hearing if so requested. The Director grants IGWA's request for reconsideration and will order a hearing. The scope of the hearing shall be limited to whether the April Forecast Supply Order followed Steps 3 and 4 of the Methodology Order (*see* page 34).

### **Request for Discovery**

In its Motion, IGWA seeks to depose two Department employees, Tony Olenichak and Lyle Swank, on May 13, 2010 in Idaho Falls. IGWA states "[t]hese depositions are necessary for the Ground Water Users to properly address the Methodology Order and the [April Forecast Supply Order]." *Motion* at 5. In conjunction with its Motion, IGWA served a *Notice of Deposition Duces Tecum of Lyle Swank and Anthony Olenichak* upon the Department ("Notice of Deposition").

Neither Mr. Olenichak nor Mr. Swank were involved in applying Steps 3 and 4 in the April Forecast Supply Order. Therefore, the Director will deny IGWA's request to depose Mr. Olenichak and/or Mr. Swank and quash its Notice of Deposition. The Director will however authorize IGWA's request for discovery regarding whether the Director, in the April Forecast Supply Order, followed Steps 3 and 4 of the Methodology Order. Again, the scope of the hearing on this issue is limited to whether the April Forecast Supply Order followed Steps 3 and 4 of the Methodology Order (*see* page 34). The Department will make Mathew Weaver available for deposition relative to the limited scope of whether the Director, in the April Forecast Supply Order, followed Steps 3 and 4 of the Methodology Order. Mr. Weaver shall be available for deposition at the Department's State Office in Boise, Idaho.

On May 7, 2010, the Department received a *Request for Hearing on Motion and Request for Status Conference* from the SWC. The SWC states that it objects "to conducting discovery in a completed record." While the Director will authorize discovery concerning the April Forecast Supply Order for the limited purpose of determining whether Steps 3 and 4 of the Methodology Order were followed, the Director denies IGWA's request to authorize discovery in the Methodology Order.

## ORDER

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

1. The Director DENIES IGWA's request for stay and/or extension of time. IGWA must demonstrate by May 13, 2010, the amount of water it has secured relative to the Director's finding of material injury.
2. The Director GRANTS IGWA's request for reconsideration and hearing regarding the April Forecast Supply Order.
3. The Director DENIES IGWA's request to depose Tony Olenichak and Lyle Swank and quashes its Notice of Deposition of Mr. Olenichak and Mr. Swank.
4. The Director GRANTS IGWA's request to authorize discovery, for the limited purpose, of whether the April Forecast Supply Order followed Steps 3 and 4 of the Methodology Order.
5. The Director DENIES IGWA's request to authorize discovery regarding the Methodology Order.

IT IS FURTHER ORDERED as follows:

That the Director will make available Mathew Weaver for deposition relative to the limited scope of whether the Director, in the April Forecast Supply Order, followed Steps 3 and 4 of the Methodology Order. Mr. Weaver shall be available for deposition at the Department's State Office in Boise, Idaho.

IT IS FURTHER ORDERED as follows:

A hearing on the limited issue of whether the April Forecast Supply Order followed Steps 3 and 4 of the Methodology Order shall commence immediately following conclusion of the May 24, 2010 hearing on 2008 data in the Methodology Order.

Dated this 10<sup>th</sup> day of May, 2010.

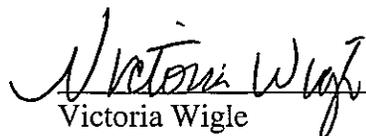
  
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of May, 2010, the above and foregoing, was served by the method indicated below, and addressed to the following:

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Administrative Assistant to the Director