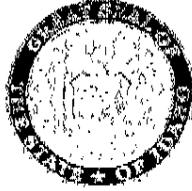


DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO



ERIC J. WILDMAN
PRESIDING JUDGE
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Director of IDWR
Facsimile: (208) 287-6700

Via Facsimile

Re: Issuance of *Order Denying Request for Temporary Restraining Order and Application for Stay*

Dear Counsel:

Please find enclosed herein a courtesy copy of the Court's *Order Denying Request for Temporary Restraining Order and Application for Stay* to be filed today in Jerome County.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Wildman". The signature is written over a horizontal line.

Eric J. Wildman
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

IDAHO GROUND WATER
APPROPRIATORS, INC., MAGIC
VALLEY GROUND WATER DISTRICT,
and NORTH SNAKE GROUND WATER
DISTRICT,

Petitioners,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, IN
HIS OFFICIAL CAPACITY AS INTERIM
DIRECTOR OF THE IDAHO
DEPARTMENT OF WATER RESOURCES

Respondents.

CASE NO. _____

ORDER DENYING REQUEST
FOR TEMPORARY
RESTRAINING ORDER AND
APPLICATION FOR STAY

This matter originated on May 11, 2010 when Petitioners contacted the Clerk of the Court about scheduling a time to meet with the Court regarding a request for the issuance of a temporary restraining order. The Court set a time to meet on May 12, 2010. Prior to the time set for meeting, the Court was contacted by the Idaho Department of Water Resources ("IDWR") requesting permission to participate. Counsel for the City of Pocatello was also present. At the time set for meeting, after counsel for Petitioners explained the relief sought, the Court determined to put the matter on the record. At the hearing, Petitioners presented the Court with the following documents for filing: (1) Petition for Judicial Review; (2) Application for Stay; (3) Affidavit of Timothy P. Deeg; and (4) Affidavit of Candice M. McHugh. The Court took the matter under advisement to review the pleadings. On May 13, 2010, counsel for American Falls Reservoir District

No. 2, and on behalf of other members of the Surface Water Coalition, submitted a letter to this Court objecting to the actions being taken by Petitioners before this Court. The letter is noted by this Court and this Court will treat it as an objection and file it together with the other pleadings submitted by Petitioners.

A. Application for stay and/or temporary restraining order.

Although styled as an application for stay the Court stated on the record that it would treat the matter alternatively as a request for the issuance of a temporary restraining order pursuant to Idaho Rule of Civil Procedure 65(b) and would interlineate the pleading. Rule 65(b) provides for the issuance of a temporary restraining order without notice under certain conditions. Any other proceeding for a stay does not. Although IDWR apparently had notice and participated in the hearing other parties that are the subject of the underlying agency action were not provided notice. Accordingly the matter is treated solely as an application for temporary restraining order under I.R.C.P. 65(b).

B. Standard for issuance of a temporary restraining order.

Rule 65(b) provides, among other things, that a temporary restraining order may only be granted if "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition" and the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required. I.R.C.P. 65(b). Rule 65(c) provides that no restraining order shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages that may be incurred or suffered by any party who is found to have been wrongfully restrained. The decision to grant or deny a request for a temporary restraining order rests in the sound discretion of the court. *White v. Coeur d'Alene Big Creek Mining Co.*, 56 Idaho 282, 55 P.2d 720 (1936).

C. Petitioners have not met the standard for issuance of temporary restraining order.

1. Failure to provide notice to other parties affected by agency action.

Petitioners have failed to explain to the satisfaction of the Court why notice was not provided to other parties affected by the outcome of the actions of the Director sought to be temporarily restrained as required by Rule 65(b).

2. Finding of no immediate and irreparable injury, loss, or damage.

In this case, the Court does not find immediate and irreparable injury, loss, or damage because it has yet to be known what action the Director may take with respect to curtailment. There has been no order of curtailment issued at this time, nor has there been a final order issued for this Court to stay. Essentially what the Petitioners are requesting is that this Court issue an order restraining the Director from issuing a final order or at least defining the scope of that final order. Further, there is a pending motion for reconsideration and a scheduled hearing on IGWA's proposed mitigation plan presently before the Director in the underlying proceeding. At this point Petitioners are only required to submit to the Director the quantity of water they have secured to date. The amount of water Petitioners have secured together with their scheduled plan for securing additional water may result in the Director extending any order of curtailment. None of this information was reported to the Director in the Motion for Stay that was denied by the Director in the underlying proceeding.

3. The Director has not exceeded his authority.

There has been no allegation that the Director has acted outside the scope of his authority nor does the Court find that the Director is or will act outside the scope of his authority by issuing a final order.

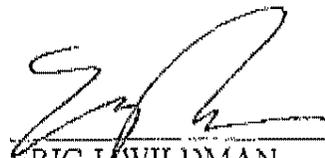
4. Security.

The dispute in this case is over the Director's predicted demand shortfall of 84,300 acre-feet for the upcoming irrigation season. For purposes of requiring security this Court would have no alternative than at a minimum to require that Petitioners secure

the 84,300 acre feet determined by the Director to be the scope of the injury to surface water users, plus a bond for attorneys' fees and costs. However, if Petitioners were able to secure that quantity of water they would not need to be before this Court seeking a stay. A determination that less security in the form of water is needed puts the Court in the middle of deciding the merits and ultimately usurping the duties of the Director. Among other things, the problem with proceeding in this manner is the standard of review that this Court is to apply.

For these reasons, IT IS HEREBY ORDERED that the Petitioners' request for the issuance of a temporary restraining order and/or motion to stay is denied. If Petitioners want to further pursue a stay pursuant to the Petition for Judicial Review, they may schedule and notice the matter for hearing.

Dated: May 13, 2010


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication