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 (Water Districts No. 120 and No. 130)	)	**ORDER DENYING SURFACE WATER COALITION'S REQUESTS FOR HEARING AND REQUEST FOR STATUS CONFERENCE**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of three motions filed by the Surface Water Coalition on May 8, 2006: *Amended Motion for Partial Summary Judgment and Request for Hearing* ("Amended Motion for Summary Judgment"); *Amended Motion in Limine to Exclude Expert Report of John Church and Request for Hearing* ("Amended Motion in Limine") (collectively referred to herein as the "Amended Motions"); and *Response to IGWA/Pocatello Extension Motions and Request for Status Conference* ("Request for Status Conference").

Requests for Hearing

The Amended Motions seek a May 16, 2006, hearing before the Director on the Surface Water Coalition's *Motion for Partial Summary Judgment and Supporting Legal Points and Authorities* ("Motion for Summary Judgment") and *Motion in Limine to Exclude Expert Report of John Church* ("Motion in Limine"). Both documents were filed with the Department on January 23, 2006. Neither the Motion for Summary Judgment nor the Motion in Limine requested a hearing.

On April 28, 2006, the Idaho Ground Water Appropriators, Inc. ("IGWA") and the City of Pocatello ("Pocatello") filed a *Joint Response to the Surface Water Coalition's Motion for Partial Summary Judgment* ("Joint Response"). IGWA also filed a *Memorandum in Opposition to Motion in Limine to Exclude Expert Report of John Church* ("Memorandum in Opposition") on April 28, 2006. Neither the Joint Response nor the Memorandum in Opposition requested a hearing.

Idaho Administrative Rule 37.01.01.260 sets forth the form and content requirements for motions filed with the Department. Part 03 states that "If *the moving party* desires oral argument or hearing on the motion, *it must state so in the motion.*" IDAPA 37.01.01.260.03 (emphasis added).

Here, the Surface Water Coalition did not request a hearing in its Motion for Summary Judgment. Instead, the Surface Water Coalition requested a hearing in its Amended Motions, which were filed after the Joint Response and Memorandum in Opposition. In accordance with IDAPA 37.01.01.260.03, the Director should deny the Surface Water Coalition's requests for hearing because, as the moving party, it did not request a hearing in its Motion for Summary Judgment or Motion in Limine. Therefore, pending the filing of any reply briefs on or before May 12, 2006, the Motion for Summary Judgment and Motion in Limine should be deemed submitted on the briefs.

Request for Status Conference

The Surface Water Coalition's Request for Status Conference was filed in response to Pocatello's April 27, 2006, *Motion for Extension of Deadlines and to Reset Hearing* and IGWA's May 2, 2006, *Response to Pocatello's Motion for Extension of Time and IGWA's Separate Motion for Extension of Time* (collectively referred to herein as "Requests for Extension of Time"). In the Requests for Extension of Time, Pocatello and IGWA stated that the Director should issue an amended scheduling order that would push forward all remaining dates established in the February 10, 2006, *Order Staying Proceedings and Amended Scheduling Order*, by approximately 90 days.

In addition to essentially agreeing with the dates set forth in the Requests for Extension of Time, the Surface Water Coalition requested that the Department order a status conference.

On May 8, 2006, the United States Bureau of Reclamation filed its *Response to Pocatello's Motion for Extension of Deadlines and IGWA's Motion for Extension of Time*, in which it agreed with the dates proposed by the Surface Water Coalition.

Since the parties have not reached settlement in this matter, the Director should issue a Second Amended Scheduling Order. Because the parties' proposed schedules are substantially similar, the Director will issue a Second Amended Scheduling Order in accordance with the proposals. Therefore, there is no need for a scheduling conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Surface Water Coalition's requests for hearing on its *Amended Motion for Partial Summary Judgment and Request for Hearing* and *Amended Motion in Limine to Exclude Expert Report of John Church and Request for Hearing* are DENIED. Furthermore, the Surface Water Coalition's *Request for Status Conference* is DENIED.

DATED this 10th day of May 2006.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May 2006, the above and foregoing, was served by the method indicated below, and addressed to the following:

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