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DEPARTMENT OF WATER RESOURCES

DISTRICT COURT GOODING CO. IDAHO FILED

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GOODING COUNTY CLERK

BY:

[Signature]

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

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,)

UNITED STATES OF AMERICA)
BUREAU OF RECLAMATION,)

Petitioners,)

vs.)

IDAHO DAIRYMEN'S ASSOCIATION,)
INC.,)

Cross-Petitioner,)

vs.)

GARY SPACKMAN, in his capacity as)
Interim Director of the Idaho Department)
of Water Resources,¹ and THE)
DEPARTMENT OF WATER)
RESOURCES,)

Respondents.)

IN THE MATTER OF DISTRIBUTION)
OF WATER TO VARIOUS WATER)
RIGHTS HELD BY OR FOR THE)

Case No. 2008-000551
ORDER STAYING DECISION
ON PETITION FOR
REHEARING PENDING
ISSUANCE OF REVISED FINAL
ORDER

¹ Director David R. Fulhill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman was appointed as Interim Director, I.R.C.P. 25 (d) and (e).

BENEFIT OF A&B IRRIGATION)
 DISTRICT, AMERICAN FALLS)
 RESERVOIR DISTRICT #2, BURLEY)
 IRRIGATION DISTRICT, MILNER)
 IRRIGATION DISTRICT, MINDOKA)
 IRRIGATION DISTRICT, NORTH SIDE)
 CANAL COMPANY, AND TWIN FALLS)
 CANAL COMPANY.)

I.

PROCEDURAL BACKGROUND AND FACTS

On July 24, 2009, this Court issued its *Order on Petition for Judicial Review* in the above-captioned matter. In its *Order*, this Court held that the Director of the Idaho Department of Water Resources (“Director” or “IDWR”) abused discretion by issuing two *Final Orders* in response to Hearing Officer Schroeder’s *Recommended Order* of April 29, 2008. Specifically, this Court held that the Director failed to apply new methodologies for determining material injury to reasonable in-season demand and reasonable carryover. On August 13, 2009, the Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, and Magic Valley Ground Water District timely filed a *Petition for Rehearing* on the Court’s July 24, 2009 *Order*. On August 14, 2009, the City of Pocatello also timely filed a *Petition for Rehearing*.

In its *Response Brief on Rehearing*, and at oral argument on the petitions for rehearing on February 23, 2010, IDWR stated that there is sufficient information for the Director to issue an order determining material injury to reasonable in-season demand and reasonable carryover, without conducting a hearing or requiring additional information from the parties. However, IDWR requested thirty to sixty days to develop a new methodology, apply that methodology to the facts on the record, and issue an order in accordance with this Court’s previous holding. IDWR proposed that this Court hold in abeyance its decision on rehearing, until the Director issues the new order and the time for filing a motion for reconsideration and a petition for judicial review of the order has expired.

It is this Court’s understanding that all parties were in agreement as to the Court holding in abeyance a final order on **all of the issues** presented on rehearing. As such, at

this time, the Court will not issue a final decision on rehearing. However, in the event this Court misunderstood the respective positions of the parties, the parties have seven (7) days to file a notice with the Court, indicating any objection to holding in abeyance a final order on all of the issues presented on rehearing.

II.

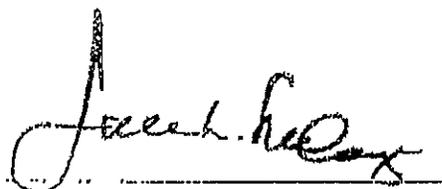
ORDER

Therefore, based on the foregoing, the following are hereby ORDERED:

1. The Director of IDWR shall issue a *Final Order* determining material injury to reasonable in-season demand and reasonable carryover by **March 31, 2010**.
2. Pursuant to I.A.R. 13(b)(14), this Court shall hold in abeyance any final decision on rehearing until such an order is issued and the time periods for filing a motion for reconsideration and petition for judicial review of the new order have expired.
3. Parties have seven (7) days from the entry of this *Order* to submit a notice to this Court, indicating any objection to the Court holding in abeyance a final order on rehearing.

IT IS SO ORDERED.

Dated ^{by} March 4, 2010



JOHN M. MELANSON
District Judge, *Pro Tem*.

NOTICE OF ORDERS
I.R.C.P. 77(d)

I, Cynthia R. Eagle-Ervin, Deputy Clerk of Gooding County do hereby certify that on the 4 of March 2010, pursuant to Rule 5(e)(1) the District Court filed in chambers the foregoing instrument and further pursuant to Rule 77(d) I.R.C.P., I have this day caused to be delivered a true and correct copy of the within and foregoing instrument: Order Staying Decision on Petition for Rehearing...to the parties listed below via the U.S. Postal Service, postage prepaid:

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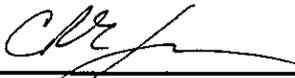
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Dated: March 4, 2010



Cynthia R. Eagle-Ervin, Deputy Clerk