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DEPARTMENT OF WATER RESOURCES

DISTRICT COURT GOODING CO. IDAHO FILED

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE GOODING COUNTY CLERK

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING R. Tamm DEPUTY

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 OVERRULING)
OBJECTION TO ORDER)
STAYING DECISION

¹ Director David R. Tuthill 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.)

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.

After a hearing on *Petitions for Rehearing*, this Court issued its *Order Staying Decision on Petition for Rehearing Pending Issuance of Revised Final Order*, on March 4, 2010. In its *Order*, the Court ordered the Director to issue a revised *Final Order*, determining material injury to reasonable in-season demand and reasonable carryover by March 31, 2010. The Court ordered a stay of its decision on rehearing until such an order was issued and the time period for filing motions for reconsideration or petitions for judicial review had expired. On March 11, 2010, the Surface Water Coalition (“SWC”) filed an *Objection to Order Staying Decision*. On March 17, 2010, the Ground Water Users (“GWU”) and the City of Pocatello filed a *Response to the Surface Water Users’ Objection*.

SWC argues that the Court should issue a ruling now on the question of whether the Director, once an injury determination has been made, has discretion to require a hearing prior to administration of junior groundwater rights. SWC requests that the Court issue a decision on this issue so that the Director can incorporate the Court’s determination into the *Final Order* that is due on March 31, 2010. GWU and Pocatello argue that the SWC request is, in reality, a request that the Court now decide whether the junior groundwater users will be curtailed prior to any hearing on the GWU Mitigation

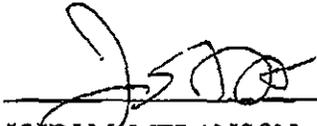
Plan that has been pending since November 9, 2009, should the Director find material injury in his March 31, 2010 *Final Order*. It is argued that if that occurs, the junior ground water users will be curtailed without a hearing on the Director's *Final Order* or their proposed Mitigation Plan. Based upon their arguments, it appears that SWC, GWU and Pocatello all believe that the Director intends to provide a hearing in the absence of any specific order from this court. The parties are all aware of this Court's decision in its June 19, 2009 *Order on Petitions for Judicial Review* in Gooding County Case No. CV-2008-444, holding that the CMR require a hearing after junior water users submit a mitigation plan and prior to the approval of such plan. The parties are also aware of this Court's *Order on Petitions for Rehearing* in that case, ruling that, to the extent the June 19, 2009 *Order* could be interpreted to *require* that the Director hold a hearing after the material injury determination has been made, that portion of the June 19th *Order* was withdrawn. The parties may refer to that decision for some guidance.

However, this case is before the Court on a petition for judicial review of the Director's decision. The Court's function in this case is to review the decisions of the Director and apply the standard of review. Accordingly, this Court will hold the question of whether the Director has discretion to hold a hearing prior to administration of junior ground water rights in abeyance, pending the issuance of the Director's *Final Order*, so that the Director's decision may be reviewed in the context of that *Order*.

Therefore, based on the foregoing, it is hereby ORDERED that, pursuant I.A.R. 13(b)(14) and the Court's previous orders, this Court shall continue to hold in abeyance any final decision on rehearing until the Director issues a *Final Order* and the time periods for filing motions for reconsideration and petitions for judicial review of the new order have expired.

IT IS SO ORDERED.

Dated March 25, 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 25 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 Overruling Objection to Order Staying Decision...to the parties listed below via the U.S. Postal Service, postage prepaid:

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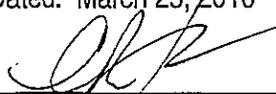
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Dated: March 25, 2010



Cynthia R. Eagle-Ervin, Deputy Clerk

Notice of Orders
Certificate of Mailing
IRCP 77(d)