



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 11, 2005

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702-6049

VIA FACSIMILE TO (208) 331-0954 AND FIRST CLASS MAIL

Re: Department Orders of February 14, 2005, April 19, 2005, and May 2, 2005,
In the Matter of the Surface Water Coalition Delivery Call

Dear Jo:

Your letter of May 5, 2005, submitted on behalf of your client the City of Pocatello, requests that I provide Pocatello with the record of decision or "ROD" that I considered in reaching the decision that led to my Order of February 14, 2005, Order of April 19, 2005, and Amended Order of May 2, 2005, with respect to the January 14, 2005 delivery call placed by the Surface Water Coalition ("SWC"). Your letter states that the request is "intended to include all documents and other information relied on or considered by you for each finding in the orders."

Decisions that I make as the Director of the Department of Water Resources ("Director" or "Department") in the context of a contested case are subject to the provisions of the Idaho Administrative Procedure Act ("APA"), chapter 52, title 67, Idaho Code. Idaho Code § 67-5249 specifies the documents or other matters that are to be maintained in the agency record in a contested case. This record is required to be maintained by the agency in order to facilitate any judicial review that may occur following the decision.

Regarding the Amended Order of May 2, 2005, and the orders that preceded it, persons that may be aggrieved by that decision have not yet had an opportunity for a hearing as provided for under the provisions of Idaho Code § 42-1701A(3). As stated in the Amended Order, any party to the proceeding has fourteen (14) days from the date of the Amended Order to file a petition for reconsideration. Further, any person aggrieved by the decision has fifteen (15) days after receipt of notice of the Amended Order to file a written petition contesting the decision and requesting a hearing. Because the existing parties and any other potentially aggrieved persons have not yet had an opportunity to exhaust their administrative remedies in this matter, the Department has not proceeded with compiling a formal agency record.

Josephine P. Beeman
May 11, 2005
Page 2 of 2

While there may be a requirement imposed upon certain federal agencies to publish a Record of Decision or "ROD" upon the issuance of a decision, which contains the rationale for all required findings, such is not a requirement under Idaho law. The Department is not presently in a position to comply with your broad request to provide "all documents and other information relied on or considered ... for each finding in the orders."

Your letter states, "Pocatello intends to exhaust its administrative remedies in this matter" Given your client's intention to exhaust its administrative remedies, it will be feasible for the Department to provide your client and other parties to the proceeding with the types of supporting documentation identified in your letter at a later time, but prior to any hearing. As you should know, I have dedicated the staff resources that would be needed to fulfill your request to the tasks of developing the necessary information for responding to the six additional water delivery calls that are pending before the Department.

Finally, I have today issued an order granting the City of Pocatello's Petition to Intervene in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl J. Dreher", written over a circular stamp or mark.

Karl J. Dreher
Director

c: Attached Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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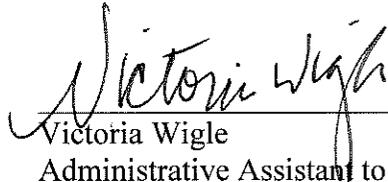
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Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources