BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION SEEKING DESIGNATION OF A CRITICAL GROUND WATER AREA, DESIGNATION OF A GROUND WATER MANAGEMENT AREA, MORATORIUMS ON APPROVAL OF NEW WATER RIGHT APPROPRIATIONS, AND OTHER ACTIONS	)	**ORDER DENYING PETITION FOR RECONSIDERATION**

On December 1, 2004, the Director of the Idaho Department of Water Resources ("Director" or "Department") issued an Order denying the relief requested by the Petitioners in this matter relating to the Palouse Basin aquifer system ("Order"). Petitioners sought designation of a critical ground water area, designation of a ground water management area, a moratorium on approval of new water right appropriations, a moratorium on further development under existing permits to appropriate ground water, and the implementation of other actions by the Director.

On December 14, 2004, Petitioners filed a Petition for Reconsideration of the Director's Order, pursuant to Idaho Code § 67-5246(4). Petitioners requested that the Director reexamine the data and assumptions used to arrive at his determination that "[r]ecent data over the last six years suggests that the slope of the decline is decreasing and water levels in the Grande Ronde Formation are beginning to stabilize." Order, Finding of Fact 5.d.

Stabilizing Ground Water Levels

In addition to considering the data from the Washington State Uuniversity test well in Pullman, Washington, the Director has also considered ground water level measurement data provided by the City of Moscow. Ground water levels for City of Moscow wells diverting from the Grande Ronde Formation indicate stabilization in recent years. The data from the City of Moscow show average annual static water levels in City of Moscow Wells Nos. 6 and 8 increasing from 2000 through 2004. Ground water levels in City of Moscow Well No. 9 also indicate recent stabilization based on average annual static water levels from 1999 through 2004. Based on this data, the Director is not inclined to alter his determination that designation of the Grand Ronde Formation as a critical ground water area is not warranted at this time.

Reasonably Safe Ground Water Supply

Idaho Code § 42-233a defines a critical ground water area as:

> ... any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the

> basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the director of the department of water resources.

A decrease or stabilization in the rate of decline of ground water levels does not, in isolation from other factors, correlate to a reasonably safe ground water supply. However, stabilization in the rate of decline coupled with the fact that there are currently no shortages in supply for irrigation or other uses in the basin at the current or projected (near term) rates of withdrawal do not warrant designation of a critical ground water area at this time.

Ground Water Model Predictions

The ground water model based on Lum et al. (1990) was based on potentially inaccurate aquifer parameters and estimates on recharge and discharge that recent research indicates may not be correct. This model is not and will not be the basis for management decisions.

Compliance with PBAC Agreement

The Director recognizes that individual entities have exceeded some Palouse Basin Aquifer Committee ("PBAC") goals. However, from a basin-wide resource perspective, stabilization of pumping from the Grand Ronde aquifer system has occurred, indicating that the voluntary nature of the management strategies has thus far been effective. The original 1992 Management Plan did not differentiate the aquifers. As research continued to better define the aquifer system, it became apparent that the two aquifers were distinct and should be addressed separately. PBAC goals were revised in 2000, and the new goals included stabilization of ground water levels in the Grande Ronde Formation by 2020. While the Goals and entity action plans are voluntary, progress toward assuring a continuing reasonably safe ground water supply is being made.

Satisfaction of Director's Discretion

Actions identified in the various iterations of the PBAC ground water management plan and long-term planning for projects, such as managed recharge, are sufficient to satisfy the Director's discretion at this time. The Director emphasizes, however, that pursuant to the provisions of the Order:

> [T]he Director will annually review ground water levels and conditions in the Palouse Basin aquifer system. The Director will also annually review implementation and effectiveness of the current or any subsequent ground water management plan adopted by PBAC. Based on these reviews, the Director will consider designation as a critical ground water area or a ground water management area for any portion(s) of the Palouse Basin aquifer system, where the Director determines such designation is warranted, without further petition.

Order, p. 8.

PBAC Citizen Advisory Group

As a part of the requested relief in their petition of November 21, 2003, Petitioners sought establishment of a ground water management advisory committee with representation of the diverse interests in water issues in the City of Moscow area. In response to this request, the Order provides that the existing Palouse Basin Aquifer Committee shall create a "PBAC Citizens Advisory Group" with the responsibility to develop recommendations for consideration by PBAC to effectively implement ground water management plan goals. Order, p. 8-9.

Petitioners, in their Petition for Reconsideration, now point out that their request for a ground water management committee "was predicated on the position that such a committee would have authority to bind PBAC member entities to implement such measures deemed necessary to achieve the PBAC goal of stabilizing groundwater levels." Petitioner's request that the Director create a citizen's ground water management advisory committee with binding authority over appropriators of ground water from the Palouse Basin Aquifer is not well founded. Petitioners cite no legal authority that would authorize the Director to delegate such binding authority to a citizen's committee, nor is the Director aware of such authority.

Other Arguments

The Petitioners have raised other arguments in their Petition for Reconsideration, which the Director has considered. The Director is not persuaded that any of the arguments presented requires modification of his prior Order of December 1, 2004.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that for the reasons set out above the Petition for Reconsideration filed by Petitioners in this matter is DENIED.

Dated this 4th day of January, 2005.

Karl J. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 2005, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

DIANE FRENCH
COALITION OF CONCERNED CITIZENS
202 E 7TH STREET
MOSCOW ID 83843

Victoria Wigle

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of January, 2005, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

MARK SOLOMON
PO BOX 8145
MOSCOW ID 83843

Patsy McGourty
Administrative Assistant to the Director
Idaho Dept. of Water Resources

EXPLANATORY INFORMATION
TO ACCOMPANY AN
ORDER DENYING PETITION FOR RECONSIDERATION
(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5243, Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.