



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 6, 2008

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Re: *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B, BID, Milner, MID, NSCC, and TFCC* (SWC Call Case)

Dear Counsel:

On June 2, 2008, counsel for the Surface Water Coalition ("SWC") filed a letter in the above-referenced matter in response to the *Eighth Supplemental Order Amending Replacement Water Requirements Final 2007 & Estimated 2008* ("Eighth Supplemental Order") issued on May 23, 2008, questioning whether the order is a final order as provided for at page 13 of the order. A letter received June 5, 2008 from counsel for the Idaho Ground Water Appropriators, Inc. ("IGWA") states, "Procedurally, IGWA's understanding is the same as the SWC in that the Eighth Supplemental Order is not a final agency order requiring a request for a hearing under I.C. § 42-1701A(3) because the hearing conducted before Hearing Officer Schroeder subsumed these questions and we are still awaiting a final and complete decision by Hearing Officer Schroeder."


Consistent with the practice followed for the previous supplemental orders in this matter, the Department does consider the Eighth Supplemental Order to be a final order issued by the Director and subject to the right of any party to request a hearing on the decision within fifteen (15) days of its issuance. To the extent a party is aggrieved by a determination in the Eighth Supplemental Order that is not encompassed within the issues presented at the hearing held before Hearing Officer Schroeder, a new request for hearing

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is necessary to preserve the issue. In this respect, the June 2 letter from the SWC is acknowledged as a request for hearing on the final order pursuant to I.C. § 42-1701A(3).

The SWC request that the hearing be conducted before an independent hearing officer is denied. As Director, I will serve as the hearing officer for any additional hearing required on the Eighth Supplemental Order concurrent with my consideration of exceptions filed to Hearing Officer Schroeder's recommended order issued April 29, 2008. This approach is consistent with the provision in the August 1, 2007 *Order Appointing Hearing Officer*, which provided that, "The Director maintains jurisdiction over the ongoing administration of water rights related to this matter."

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Tuthill, Jr.", with a stylized flourish at the end.

David R. Tuthill, Jr.
Director

cc: SWC Call Case Service List