

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF WATER)
TO VARIOUS WATER RIGHTS HELD BY OR FOR)
THE BENEFIT OF 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)
)
(Water Districts No. 120 and No. 130))
_____)

**ORDER DENYING
SURFACE WATER
COALITION'S REQUESTS
FOR HEARING AND REQUEST
FOR STATUS CONFERENCE**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of three motions filed by the Surface Water Coalition on May 8, 2006: *Amended Motion for Partial Summary Judgment and Request for Hearing* ("Amended Motion for Summary Judgment"); *Amended Motion in Limine to Exclude Expert Report of John Church and Request for Hearing* ("Amended Motion in Limine") (collectively referred to herein as the "Amended Motions"); and *Response to IGWA/Pocatello Extension Motions and Request for Status Conference* ("Request for Status Conference").

Requests for Hearing

The Amended Motions seek a May 16, 2006, hearing before the Director on the Surface Water Coalition's *Motion for Partial Summary Judgment and Supporting Legal Points and Authorities* ("Motion for Summary Judgment") and *Motion in Limine to Exclude Expert Report of John Church* ("Motion in Limine"). Both documents were filed with the Department on January 23, 2006. Neither the Motion for Summary Judgment nor the Motion in Limine requested a hearing.

On April 28, 2006, the Idaho Ground Water Appropriators, Inc. ("IGWA") and the City of Pocatello ("Pocatello") filed a *Joint Response to the Surface Water Coalition's Motion for Partial Summary Judgment* ("Joint Response"). IGWA also filed a *Memorandum in Opposition to Motion in Limine to Exclude Expert Report of John Church* ("Memorandum in Opposition") on April 28, 2006. Neither the Joint Response nor the Memorandum in Opposition requested a hearing.

Idaho Administrative Rule 37.01.01.260 sets forth the form and content requirements for motions filed with the Department. Part 03 states that "If the moving party desires oral argument or hearing on the motion, it must state so in the motion." IDAPA 37.01.01.260.03 (emphasis added).

Here, the Surface Water Coalition did not request a hearing in its Motion for Summary Judgment. Instead, the Surface Water Coalition requested a hearing in its Amended Motions, which were filed after the Joint Response and Memorandum in Opposition. In accordance with IDAPA 37.01.01.260.03, the Director should deny the Surface Water Coalition's requests for hearing because, as the moving party, it did not request a hearing in its Motion for Summary Judgment or Motion in Limine. Therefore, pending the filing of any reply briefs on or before May 12, 2006, the Motion for Summary Judgment and Motion in Limine should be deemed submitted on the briefs.

Request for Status Conference

The Surface Water Coalition's Request for Status Conference was filed in response to Pocatello's April 27, 2006, *Motion for Extension of Deadlines and to Reset Hearing* and IGWA's May 2, 2006, *Response to Pocatello's Motion for Extension of Time and IGWA's Separate Motion for Extension of Time* (collectively referred to herein as "Requests for Extension of Time"). In the Requests for Extension of Time, Pocatello and IGWA stated that the Director should issue an amended scheduling order that would push forward all remaining dates established in the February 10, 2006, *Order Staying Proceedings and Amended Scheduling Order*, by approximately 90 days.

In addition to essentially agreeing with the dates set forth in the Requests for Extension of Time, the Surface Water Coalition requested that the Department order a status conference.


On May 8, 2006, the United States Bureau of Reclamation filed its *Response to Pocatello's Motion for Extension of Deadlines and IGWA's Motion for Extension of Time*, in which it agreed with the dates proposed by the Surface Water Coalition.

Since the parties have not reached settlement in this matter, the Director should issue a Second Amended Scheduling Order. Because the parties' proposed schedules are substantially similar, the Director will issue a Second Amended Scheduling Order in accordance with the proposals. Therefore, there is no need for a scheduling conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Surface Water Coalition's requests for hearing on its *Amended Motion for Partial Summary Judgment and Request for Hearing* and *Amended Motion in Limine to Exclude Expert Report of John Church and Request for Hearing* are DENIED. Furthermore, the Surface Water Coalition's *Request for Status Conference* is DENIED.

DATED this 10th day of May 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May 2006, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM C. ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 32
GOODING ID 83330
(208) 934-8873
alo@cableone.net

U.S Mail, Postage Prepaid
 Facsimile
 E-mail

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318-0248
(208) 878-2548
wkf@pmt.org

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROGER D. LING
LING ROBINSON
PO BOX 396
RUPERT ID 83350-0396
(208) 436-6804
rdl@idlawfirm.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN A. ROSHOLT
TRAVIS L. THOMPSON
BARKER ROSHOLT
113 MAIN AVENUE WEST, SUITE 303
TWIN FALLS ID 83301-6167
(208) 735-2444
jar@idahowaters.com
tlt@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN K. SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JEFFREY C. FEREDAY
MICHAEL C. CREAMER
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720
(208) 388-1200
cf@givenspursley.com
mcc@givenspursley.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SCOTT L. CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701
(208) 385-5384
slc@moffatt.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

KATHLEEN M. CARR
OFFICE OF THE SOLICITOR
960 BROADWAY, SUITE 400
BOISE ID 83706
(208) 334-1378

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MATT HOWARD PN-3130
US BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
1150 NORTH CURTIS ROAD
BOISE ID 83706-1234
(208) 378-5003
mhoward@pn.usbr.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOSEPHINE P. BEEMAN
BEEMAN & ASSOCIATES
409 WEST JEFFERSON STREET
BOISE ID 83702
(208) 331-0954
jo.beeman@beemanlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SARAH A. KLAHN
WHITE & JANKOWSKI
511 16TH STREET, SUITE 500
DENVER CO 80202
sarahk@white-jankowski.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MICHAEL S. GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

TERRY T. UHLING
J.R. SIMPLOT COMPANY
999 MAIN STREET
BOISE ID 83702
(208) 336-2110
tuhling@simplot.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES C. TUCKER
IDAHO POWER COMPANY
1221 WEST IDAHO STREET
BOISE ID 83702
(208) 388-2112
jamestucker@idahopower.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES S. LOCHHEAD
BROWNSTEIN HYATT & FARBER
410 17TH STREET, 22ND FLOOR
DENVER CO 80202
(303) 223-1100
jlochhead@bhf-law.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

LYLE SWANK
IDWR
900 NORTH SKYLINE DRIVE
IDAHO FALLS ID 83402-6105
(208) 525-7177
lyle.swank@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE STREET, SUITE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



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