

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

**IN THE MATTER OF DESIGNATING  
THE EASTERN SNAKE PLAIN  
AQUIFER GROUND WATER  
MANAGEMENT AREA**

**DOCKET NO. AA-GWMA-2016-001**

**DEADLINE FOR IDWR'S SUBMITTAL  
OF MATERIALS; ORDER ON MOTION  
PRACTICE; NOTICE OF HEARING  
AND SCHEDULING ORDER; ORDER  
AUTHORIZING DISCOVERY**

**BACKGROUND**

On September 23, 2019, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") held a prehearing conference in this matter. All parties were represented either in person or by phone. The Director and parties discussed the remaining scope of potential issues and agreed upon a schedule for disposition of both legal issues through briefing and factual issues through live hearing.

The Director now establishes: (a) a deadline for IDWR to disclose all relevant materials used or considered in issuance of the *Final Order Designating the ESPA GWMA* ("Final Order"), including any additional, pertinent information compiled after issuance of the Final Order; (b) a motion and briefing schedule for disposition of legal issues; (c) notice and the scope of hearing for the remaining factual issue(s); and (d) dates for the hearing and all relevant hearing preparation deadlines. This order also authorizes discovery.

**DEADLINE FOR IDWR STAFF TO RESPOND**

**October 14, 2019** On or before October 14, 2019, IDWR Staff will disclose to the parties all relevant materials used by the Department to aid the Director in issuance of the Final Order. This disclosure will include a list of all Staff who may have knowledge or otherwise contributed to designation of the ESPA GWMA. All materials will also be posted on IDWR's website at: <https://idwr.idaho.gov/legal-actions/administrative-actions/ESPA-GWMA-order.html>.

**SCOPE OF MOTION PRACTICE ON LEGAL ISSUES**

IT IS HEREBY ORDERED the following four (4) issues represent the scope of legal issues remaining in this matter:

1. Whether the *Order Designating the ESPA GWMA* was procedurally deficient. Did the Director err when he issued the *Order Designating the ESPA GWMA* outside the auspices of the procedural requirements of the Rules for Conjunctive Management of Surface and

Ground Water Resources (IDAPA 37.03.11) and/or IDWR's Procedural Rules (IDAPA 37.01.01)?

2. Whether the Director should have conducted rulemaking. Did the Director err by not conducting rulemaking prior to designation of the ESPA GWMA?
3. Whether the Director should have designated the ESPA GWMA in a contested case. Did the Director err by not holding a contested case hearing to provide him the authority to designate an area of common ground water supply as a GWMA?
4. Whether adjudication and the formation of ground water districts in the ESPA forecloses the designation of a GWMA. Is the Director foreclosed from designating the ESPA GWMA because the ESPA has been adjudicated and contains existing ground water districts?

### **SCHEDULING ORDER FOR MOTION PRACTICE ON LEGAL ISSUES**

IT IS HEREBY ORDERED that the parties shall adhere to the following deadlines:

- October 21, 2019** Deadline for motions and/or briefing related to the remaining issues requiring legal argument, as delineated directly above. The motions and/or briefing should include argument and authority in support of each issue proposed for consideration. There will be no oral arguments on the motions or briefing.
- November 18, 2019** Deadline for any party to file a response to motions and/or briefing submitted by October 21, 2019.
- December 2, 2019** Deadline for any party to file a reply to responses submitted by November 18, 2019.

### **NOTICE OF HEARING ON REMAINING FACTUAL ISSUE**

The hearing for challenges to the designation of the ESPA GWMA will be held **February 18-21, 2019. The hearing will commence on February 18, 2019 at 9:00 a.m.** The hearing will be held at the State Offices of IDWR, 322 E Front Street, Boise, Idaho 83702, Sixth Floor, Conference Rooms B-D.

The presiding officer will be Gary Spackman, Director of the Department, whose mailing address is PO Box 83720, Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapters 31, Title 42 and Chapter 52, Title 67, Idaho Code, the Department's Rules of Procedure. A copy of the code and rules may be obtained from the Department's website, [www.idwr.idaho.gov](http://www.idwr.idaho.gov), or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the remaining factual issue.

Again, documents submitted to the Department will be posted to the Department's webpage for this matter, which can be found at: <https://idwr.idaho.gov/legal-actions/administrative-actions/ESPA-GWMA-order.html>.

The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please notify the Department at least (10) days prior to the hearing. Inquiries about scheduling or hearing facilities should be directed to Kimberle English at (208) 287-4815.

### SCOPE OF THE HEARING

IT IS HEREBY ORDERED The scope of the hearing will be limited to the following issue:

1. *Whether areas outside of the ESPA area of common ground water supply, as defined by CM Rule 50 (IDAPA 37.03.11.050), but included within the ESPA GWMA, are located in tributary basins and are otherwise sufficiently remote or hydrogeologically disconnected from the ESPA to warrant exclusion from the ESPA GWMA.*

All parties will have the right to present evidence, argue orally, and to cross-examine witnesses at hearing. Parties with substantially similar interests, evidence, testimony, and cross examination questioning should be prepared to work together at hearing. This will help prevent repetition and will streamline the hearing.

### SCHEDULING ORDER FOR HEARING

IT IS HEREBY ORDERED that the parties shall adhere to the following deadlines:

**December 9, 2019** Deadline for disclosure of experts and expert reports.

**December 31, 2019** Deadline for response to expert reports by IDWR.

**January 13, 2020** Deadline for parties' responses to expert reports, including IDWR response.

**January 13, 2020** Deadline for disclosure of lay witnesses.

**February 10, 2020** Deadline for party disclosure of exhibits. *Please call Kimberle English at (208) 287-4815 prior to final exhibit preparation for assignment of an exhibit number range.*

**February 18, 2020** Hearing begins and continues as necessary through February 21, 2020.

**ORDER AUTHORIZING DISCOVERY AND SCHEDULING ORDER**

IT IS HEREBY ORDERED that the parties are authorized to conduct and engage in discovery. *See* IDAPA 37.01.01.521. Where parties desire to meet or inquire of IDWR staff informally, all parties agree to notify other parties to allow them to participate in any relevant meetings, informational sessions, and other interactions.

Dated this 25<sup>th</sup> day of September 2019.



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Gary Spackman  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25th day of September 2019, the above and foregoing was served on the following by the method(s) indicated below:

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