

**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  
**RESPONSE TO PETITION FOR  
CLARIFICATION**

**BACKGROUND**

On November 4, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued an *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (“ESPA GWMA Order”). On November 16, 2016, the City of Pocatello (“Pocatello”), the Coalition of Cities,<sup>1</sup> and Sun Valley Company (“SVC”) timely filed petitions for reconsideration of the ESPA GWMA Order. On November 16, 2016, SVC also timely filed a *Petition Requesting a Hearing on Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (“Request for Hearing”), requesting a hearing on the ESPA GWMA Order “pursuant to Idaho Code § 1701A(3) and Rule 740 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01).” *Request for Hearing* at 1-2.

On December 2, 2016, the Director issued an *Order Granting Request for Hearing; Notice of Pre-Hearing Conference* (“Order Granting Request for Hearing”), granting SVC’s request for hearing and scheduling a pre-hearing conference for January 12, 2017. Timely petitions to intervene were filed by the Idaho Ground Water Appropriators, Inc.; the Surface Water Coalition (“SWC”)<sup>2</sup>; Pocatello; the Coalition of Cities; McCain Foods USA, Inc.; and South Valley Ground Water District. On December 27, 2016, the Director issued an *Order Granting Petitions to Intervene* granting all of the petitions to intervene.

On December 20, 2016, the Coalition of Cities filed the *Cities of Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell Petition for Clarification* (“Petition”). The Coalition of Cities note that the Order Granting Request for Hearing referenced the petitions for reconsideration filed by Pocatello, the

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<sup>1</sup> The cities participating as the Coalition of Cities in this matter are Bliss, Buhl, Burley, Carey, Delco, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell.

<sup>2</sup> The SWC is comprised 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.

Coalition of Cities, and SVC, but “did not state what occurred with the petitions for reconsideration upon the granting [of] SVC’s request for hearing.” *Petition* at 2. The Coalition of Cities asserts that, if its petition for reconsideration “was denied by operation of law” because the Director did not issue an order on the petition within twenty-one days, “the Coalition of Cities has twenty-eight days from said denial to file for judicial review.” *Id.* at 3.

## ANALYSIS

The Petition implies that the ESPA GWMA Order is ripe for judicial review. However, a person is not entitled to judicial review unless all available administrative options have been exhausted. Idaho Code § 67-5271; *Podsaid v. State Outfitters & Guides Licensing Bd.*, 159 Idaho 70, 356 P.3d 363 (2015); *Wanner v. State, Dep’t of Transp.*, 150 Idaho 164, 244 P.3d 1250(2011). “The doctrine of exhaustion requires that where an administrative remedy is provided by statute, relief must first be sought by exhausting such remedies before the courts will act.” *Regan v. Kootenai Cty.*, 140 Idaho 721, 724, 100 P.3d 615, 618 (2004). As the Idaho Supreme Court recognized, “important policy considerations underlie the requirement for exhausting administrative remedies, such as providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative process established by the Legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body.” *Regan*, 140 Idaho at 725, 100 P.3d at 619.

In *Podsaid*, the Court addressed a decision by the Idaho Outfitters and Guides Licensing Board (“Board”) to deny Podsaid’s guide license application. The Court explained that “Idaho Code § 36-2114(b) allows a guide license applicant 21 days after he receives notice of Board denial to request a hearing.” *Podsaid*, 159 Idaho at 74, 356 P.3d at 367. The Court concluded that, because Podsaid requested a hearing in accordance with Idaho Code § 36-2114(b), but “appealed before the Board conducted the hearing,” Podsaid failed to exhaust his administrative remedies. *Id.* “Because Podsaid did not complete his appeal process within the agency on the denial of” his application, the Court remanded the matter to the Board. *Id.* at 75, 356 P.3d at 368.

In *Wanner*, the Court addressed a decision by the Idaho Department of Transportation to suspend Wanner’s commercial driving privileges after Wanner “was arrested on suspicion of driving under the influence and the results of his breath tests were over the legal limit.” *Wanner*, 150 Idaho at 165, 244 P.3d at 1251. The Court explained that, because Idaho Code § 49-326(4) gives Wanner the opportunity to “request an administrative hearing related to” the suspension of his driving privileges, and Wanner’s attorney represented that Wanner had filed such a request, “[u]ntil such time as that hearing is conducted, judicial intervention into the matter of Wanner’s disqualification from operating a commercial vehicle is premature.” *Id.* at 170, 244 P.3d at 1256. Because Wanner failed to exhaust the administrative remedy “applicable to his concern,” the Court dismissed Wanner’s petition for judicial review. *Id.*

Here, because the Director granted SVC’s request for hearing regarding the ESPA GWMA Order pursuant to Idaho Code § 42-1701A(3), the Coalition of Cities is not entitled to judicial review of the ESPA GWMA Order until the administrative remedy sought by SVC has been exhausted (i.e. the hearing on the ESPA GWMA Order is complete and Director issues a

final order).<sup>3</sup> *Podsaid*, 159 Idaho at 74, 356 P.3d at 367; *Wanner*, 150 Idaho at 169, 244 P.3d at 1255; Idaho Code § 42-1701A(3) & (4).

### CONCLUSION

Based upon and consistent with the foregoing, the Director concludes that the Coalition of Cities is not entitled to judicial review of the ESPA GWMA Order until the Director issues a final order following the hearing requested by SVC.

DATED this 30<sup>th</sup> day of December 2016.



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Gary Spackman  
Director

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<sup>3</sup> The Director's December 27, 2016, *Order Granting Petitions to Intervene* granted the Coalition of Cities' request to intervene in the hearing requested by SVC. The Coalition of Cities may participate as a party in the hearing. *See* IDAPA 37.01.01.156.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of December 2016, the above and foregoing was served on the following by the method(s) indicated below:

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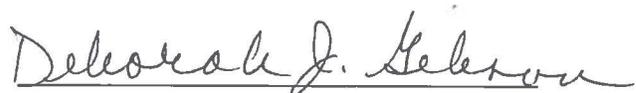
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