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	Docket No. CM-DC-2010-001 Docket No. CM-MP-2015-003 **ORDER GRANTING A&B'S REQUESTS TO WITHDRAW REQUESTS FOR HEARINGS RE: CREDIT FOR AQUIFER ENHANCEMENT ACTIVITIES AND STANDARD OF MITIGATION**
IN THE MATTER OF THE MITIGATION PLAN FILED BY A&B IRRIGATION DISTRICT FOR THE DISTRIBUTION OF WATER TO WATER RIGHTS HELD BY THE SURFACE WATER COALITION	

BACKGROUND

On April 19, 2016, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued the *Final Order Regarding April Forecast Supply (Methodology Steps 1-3)* ("April Forecast Supply Order"), which applied steps 1, 2, and 3 of the Methodology Order. The Director predicted an in-season demand shortfall ("DS") of 44,200 acre-feet. *April Forecast Supply Order* at 3-4.

On May 2, 2016, A&B Irrigation District ("A&B") submitted to the Department *A&B Irrigation District's Notice of Mitigation* ("Notice"), identifying "various mitigation actions" to "mitigate for its 'proportionate share' of the predicted in-season [DS]." *Notice* at 2-3.

On May 11, 2016, the Director issued an *Order Determining Deficiency in A&B Irrigation District's Notice of Mitigation* ("Deficiency Order"). The Director denied A&B's request to reduce its proportionate share of the predicted DS "because of the effects of aquifer enhancement activities," but decided to set and hear oral argument on the issue pursuant to the Department's Rule of Procedure 563. *Deficiency Order* at 3. On May 12, the Director issued an order scheduling a pre-hearing conference on the issue for May 19, 2016.

On May 13, 2016, A&B submitted to the Department *A&B Irrigation District's Notice of Communication to Water District 01 Watermaster/Request for Hearing* ("Request for Hearing"). A&B asserted the Deficiency Order "created a new standard regarding mitigation that has not been previously applied to other affected junior ground water right holders" and requested a hearing pursuant to Idaho Code § 42-1701A(3). *Request for Hearing* at 2.

On May 19, 2016, the Director held a pre-hearing conference. Counsel for A&B requested the Director stay the hearing on the issue of whether A&B's proportionate share of the predicted DS should be reduced because of the effects of aquifer enhancement activities. The Director subsequently issued an order granting A&B's request to stay the hearing on the issue.

On May 24, 2016, the Director issued an order granting A&B's request for hearing on the issue of whether the Deficiency Order created a new standard of mitigation and scheduled a pre-hearing conference for June 30, 2016.

On June 14, 2016, A&B submitted a letter to the Director stating "it has elected to not deliver groundwater pursuant to its enlargement water rights that are subject to the [April Forecast Supply Order]" and requesting the Director "rescind any mitigation obligation attributed to [A&B]."

On June 30, 2016, the Director issued a response to A&B's June 14, 2016, letter stating that A&B will not have a mitigation obligation for this year if A&B curtails the enlargement ground water rights and if the priority date for curtailment for 2016 remains junior to A&B's other ground water rights.

On July 1, 2016, A&B filed *A&B Irrigation District's Notice of Withdrawal of Request for Hearing* withdrawing its request for hearing on the issue of whether A&B's proportionate share of the predicted DS should be reduced because of the effects of aquifer enhancement activities. On July 1, 2016, A&B also filed *A&B Irrigation District's Notice of Withdrawal of Request for Hearing* withdrawing its request for hearing on the issue of whether the Deficiency Order created a new standard of mitigation. The Department received no opposition to A&B's requests to withdraw its requests for hearing.

ORDER

IT IS HEREBY ORDERED that A&B's request to withdraw its request for hearing on the issue of whether A&B's proportionate share of the predicted DS should be reduced because of the effects of aquifer enhancement activities is GRANTED.

IT IS FURTHER ORDERED that A&B's request to withdraw its request for hearing on the issue of whether the Deficiency Order created a new standard of mitigation is GRANTED.

DATED this 2nd day of September 2016.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September 2016, the above and foregoing was served on the following by the method(s) indicated below:

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Deborah J. Gibson

Deborah Gibson
Admin. Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), 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) the service date of 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.