

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

IN THE MATTER OF DISTRIBUTION OF WATER) **CM-DC-2011-003**
TO WATER RIGHTS NOS. 36-07072 AND)
36-08356) **FINAL ORDER DISMISSING**
) **DELIVERY CALL**
(SEAPAC OF IDAHO))
_____)

The Interim Director of the Department of Water Resources (“Director” or “Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 12, 2011, the Department received a letter from SeaPac of Idaho, Inc. (“SeaPac”) alleging that its water right nos. 36-7407072 and 36-08356 were being materially injured by junior ground water pumping. The letter requested the curtailment of junior ground water rights pursuant to Idaho Code and the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”).
2. The Department treated the letter as a delivery call under the CM Rules and as a petition to initiate a contested case proceeding. CM Rule 30. The Department assigned the case docket number CM-DC-2011-003.
3. On July 25, 2011, the Idaho Ground Water Appropriators, Inc, (“IGWA”) moved to be designated as a respondent or alternatively to intervene in the proceeding. The Department granted IGWA’s petition to intervene on August 3, 2011.
4. A prehearing conference was held on August 8, 2011. The parties agreed to a schedule for the hearing and a scheduling order was issued by the Department.
5. On October 24, 2011, a stipulation was submitted to the Department requesting that the scheduling order be vacated while settlement discussions take place between the parties. The Department granted the request.
6. On May 3, 2012, SeaPac, the North Snake Ground Water District, Magic Valley Ground Water District, Southwest Irrigation District (the “Ground Water Districts”) and IGWA filed a *Stipulated Mitigation Plan and Request for Order* (“Mitigation Plan”) with the Department. The Mitigation Plan stems from negotiations between the parties. The Mitigation Plan is made up of a Settlement Agreement and Lease. The Mitigation Plan provides:

The parties agree that the Settlement Agreement together with the Lease are intended to be a mitigation plan as defined in the Conjunctive Management Rules and request the Director of IDWR issue an Order confirming the Settlement Agreement as a Final Mitigation Plan for the duration of the Lease and dismissing the underlying proceeding pursuant to paragraph 5.8 of the Settlement Agreement,

Mitigation Plan at 2.

7. On May 3, 2012, the Director also received a *Stipulation for Dismissal* (“Stipulation for Dismissal”) signed by counsel for SeaPac and IGWA. The Stipulation for Dismissal provides:

The parties, SeaPac of Idaho and the Idaho Ground Water Appropriators, Inc., hereby stipulate that for the reason that a compromised resolution has been reached by the parties, that they do hereby stipulate to the dismissal of this matter as to IGWA, its members and member ground water and irrigation districts, on the terms of their stipulated settlement.

Stipulation for Dismissal at 1.

CONCLUSIONS OF LAW

1. The Director shall review proposed settlement agreements. IDAPA 37.01.01.614. Having reviewed the Stipulation for Dismissal, as well as the Mitigation Plan, the Director agrees this matter should be dismissed.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

This matter is hereby DISMISSED.

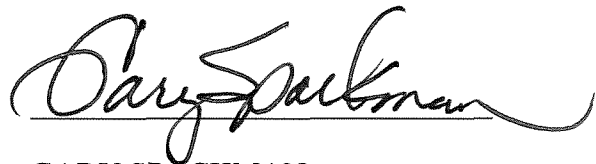
IT IS FURTHER ORDERED that this is a FINAL ORDER of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that 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* Idaho Code § 42-1701A(3).

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter 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 a hearing was held, the final agency action was taken, the party seeking review of the order resides, or 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: (a) of the service date of the final order; (b) of an order denying a petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

DATED this 18th day of May, 2012.

A handwritten signature in black ink, reading "Gary Spackman", written over a horizontal line. The signature is cursive and extends to the right of the line.

GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

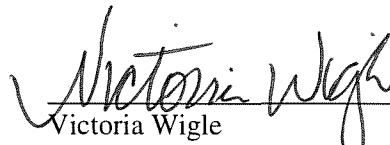
I HEREBY CERTIFY that on this 18th day of May 2012, the above and foregoing, was served by the method indicated below, and addressed to the following:

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