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DEPARTMENT OF WATER RESOURCES

DISTRICT COURT GOODING CO. IDAHO FILED

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CLERK DEPUTY

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,

UNITED STATES OF AMERICA BUREAU OF RECLAMATION,

Petitioners,

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,

Cross-Petitioner,

vs.

GARY SPACKMAN, in his capacity as Interim Director of the Idaho Department of Water Resources,¹ and THE IDAHO DEPARTMENT OF WATER RESOURCES,

Respondents.

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE

Case No. 2008-000551

ORDER DENYING MOTION FOR STAY AND TO AUGMENT THE RECORD

¹ Director David R. Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman was appointed as Interim Director, I.R.C.P. 25 (d) and (e).

BENEFIT OF A&B IRRIGATION)
 DISTRICT, AMERICAN FALLS)
 RESERVOIR DISTRICT #2, BURLEY)
 IRRIGATION DISTRICT, MILNER)
 IRRIGATION DISTRICT, MINDOKA)
 IRRIGATION DISTRICT, NORTH SIDE)
 CANAL COMPANY, AND TWIN FALLS)
 CANAL COMPANY.)

I.

PROCEDURAL BACKGROUND

This Court previously ordered the Director of the Idaho Department of Water Resources (“IDWR”) to issue a revised final order detailing methodologies for determining injury to reasonable in-season demand and reasonable carryover in the above-captioned matter. On April 7, 2010, the Director issued a *Final Order Regarding Methodology for Determining Reasonable In-Season Demand and Reasonable Carryover* (“*Methodology Order*”). Parties to this matter filed motions for reconsideration of the *Methodology Order*.

On May 13, 2010, the City of Pocatello and the Idaho Ground Water Appropriators (“IGWA”) filed a joint *Motion for Stay and to Augment the Record with Additional Evidence*. Responses were filed by IDWR and the Surface Water Coalition. The City of Pocatello and IGWA filed a joint reply. Pursuant to I.C. § 67-5276, the *Motion* requests this Court to order the Director to hold a hearing on the motions for reconsideration. In addition, Pocatello and IGWA request a stay of the above-captioned matter.

Idaho Code Section 67-5267 is not the proper avenue for parties to request a hearing on a matter pending before the Director. Until such a time that the parties have exhausted all administrative remedies, this Court cannot order augmentation of the administrative record. Moreover, after a hearing on at least a portion of the Director’s *Methodology Order*, the Director issued the *Order on Reconsideration of Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* on June 16, 2010, in which the Director detailed changes made to the original *Methodology Order*. Also on June 16, 2010, the Director

issued an *Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*. As such, the administrative proceedings before the Director on remand have concluded.

Finally, on March 4, 2010, this Court issued its *Order Staying Decision on Petition for Rehearing Pending Issuance of Revised Final Order*. In its *Order*, the Court ordered a stay of its decision on rehearing in this matter until the Director issued a final order on remand and the time period for filing motions for reconsideration and petitions for judicial review had expired. The stay issued by this Court is still in effect, as the time period for filing petitions for judicial review of the Director's *Order* has not expired.

II.

ORDER

Therefore, based on the foregoing, the following are HEREBY ORDERED:

1. This Court shall continue to hold in abeyance any final decision on rehearing in this matter until the time period for filing petitions for judicial review of the *Methodology Order* have expired.
2. The City of Pocatello and IGWA's joint *Motion* is denied.

IT IS SO ORDERED.

Dated June 23, 2010


JOHN M. MELANSON
District Judge, *Pro Tem.*

NOTICE OF ORDERS
I.R.C.P. 77(d)

I, Cynthia R. Eagle-Ervin, Deputy Clerk of Gooding County do hereby certify that on the 23 of June 2010, pursuant to Rule 5(e)(1) the District Court filed in chambers the foregoing instrument and further pursuant to Rule 77(d) I.R.C.P., I have this day caused to be delivered a true and correct copy of the within and foregoing instrument: Order Denying Motion for Stay and to Augment record to the parties listed below via the U.S. Postal Service, postage prepaid:

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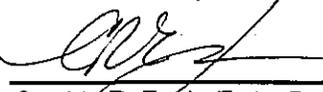
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Dated: June 23, 2010



Cynthia R. Eagle-Ervin, Deputy Clerk