

Denying Petition for Declaratory Rulings (“Order”) issued by the Director of the Idaho Department of Water Resources (“Department”) on November 3, 2016.

2. On January 13, 2017, the Sun Valley Company filed a *Motion to Determine Jurisdiction*, requesting that the Court determine it has jurisdiction over its *Petition*. A response in support of the *Motion* was filed by the City of Pocatello. Responses in opposition to the *Motion* were filed by the Department and the Surface Water Coalition.¹ A hearing on the *Motion* was held before the Court on February 13, 2017.

II. ANALYSIS

The issue presented is whether the Court has jurisdiction over the *Petition* filed by the Sun Valley Company. The Court holds it lacks jurisdiction under the plain language of Idaho Code § 42-1701A(3) and the doctrine of exhaustion. Idaho Code § 42-1701A governs hearings before the Director. Subsection (1) provides that when the Director is required to hold a hearing prior to taking an action, he must conduct it in accordance with the provisions of the IDAPA. Subsection (2) permits the Director to appoint a hearing officer to conduct such a hearing and make a complete record of the evidence presented. Subsection (3) governs the situation where the Director takes an action without a hearing. It is this subsection that is implemented under the facts and circumstances present here.

Subsection (3) provides that “any person aggrieved by any action of the director, including any decision, determination, order or other action . . . 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.” I.C. § 42-1701A(3). The Legislature instructs that such an aggrieved 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.” *Id.* (emphasis added). This procedural step is mandatory. *See e.g., Twin Falls County v. Idaho Com'n on Redistricting*, 152 Idaho 346, 349, 271 P.3d 1202, 1205 (2012) (the term “shall” when used in a statute is mandatory); *see also* I.C. § 42-237e. The Director will then hold an administrative

¹ The term “Surface Water Coalition” refers collectively to the 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.

hearing on the matter in accordance with the procedures set forth in IDAPA. I.C. § 42-1701A(3). Finally, subsection (3) instructs that “[j]udicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.” *Id.* Subsection (4) provides for the right of judicial review in accordance with the standards set forth in IDAPA. I.C. §§ 42-1701A(4).

The Director acted and issued his *Order* in this case without a hearing. Therefore, subsection (3) of Idaho Code § 42-1701A controls. The Sun Valley Company, which is aggrieved by the Director’s action, has not previously been afforded the opportunity for an administrative hearing on the matter. The plain language of subsection (3) therefore requires that it file a written petition with the Director stating the grounds for contesting his action and request a hearing. This is the administrative remedy available to an aggrieved person.

In addition, the Court finds that it lacks jurisdiction under the doctrine of exhaustion. The Court addresses the doctrine of exhaustion in Section II.B. of its *Order on Motion to Determine Jurisdiction* issued contemporaneously herewith in Ada County Case No. CV-01-16-23185. Rather than repeat the same analysis, the Court incorporates that Section herein by reference. It follows that the Sun Valley Company’s *Petition* must be dismissed.

III.

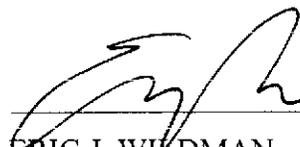
ORDER

THEREFORE, BASED ON THE FOREGOING THE FOLLOWING ARE HEREBY ORDERED:

1. The Sun Valley Company’s *Motion to Determine Jurisdiction* **is hereby denied.**
2. The Sun Valley Company’s *Petition for Judicial Review* **is hereby dismissed**

with prejudice.

Dated February 16, 2017



ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO DETERMINE JURISDICTION / ORDER DISMISSING PETITION FOR JUDICIAL REVIEW was mailed on February 16, 2017, with sufficient first-class postage to the following:

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