

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

IN THE MATTER OF SUN VALLEY
COMPANY'S PETITION FOR DECLARATORY
RULING REGARDING CREATION OF ESPA
GROUND WATER MANAGEMENT AREA

Docket No. P-DR-2016-001

ORDER OF DISMISSAL

BACKGROUND¹

On July 7, 2016, the Director of the Idaho Department of Water Resources ("Department") sent a letter to potentially interested water users stating that the Department "is considering creating a ground water management area for the Eastern Snake Plain Aquifer (ESPA)." Ltr. from Gary Spackman, Dir., Idaho Dept. of Water Res. to Interested Parties (July 7, 2016).

In response, on July 25, 2016, the Sun Valley Company ("SVC") filed a *Petition for Declaratory Ruling Regarding Creation of ESPA Ground Water Management Area* ("Petition"). On July 29, 2016, SVC filed an *Amended Petition for Declaratory Ruling Regarding Creation of ESPA Ground Water Management Area* ("Amended Petition"). On October 19, 2016, SVC filed a *Second Amended Petition for Declaratory Ruling Regarding Creation of ESPA Ground Water Management Area* ("Second Amended Petition"). The Petition, the Amended Petition, and the Second Amended Petition (collectively, "Petitions") sought fourteen (14) specific declaratory rulings pursuant to Idaho Code § 67-5232 and Rule 400 of the Department's Rules of Procedure. (IDAPA 37.010.400).

On November 2, 2016, the Director issued the *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* ("Designation Order") in a separate, administrative docket, Docket No. AA-GWMA-2016-001.

Subsequently, on November 3, 2016, the Director dismissed the Petitions

(1) because the questions and issues raised by Sun Valley Company in its Petitions are inextricably intertwined with factual and technical issues that require development and such development cannot occur solely on the basis of legal briefing and oral argument; and (2) because issuance of the [Designation] Order creates a forum for Sun Valley Company to address the issues raised in the Petitions and practical considerations of efficiency and expediency necessitate that issues raised in the Petitions be addressed through the normal administrative review process and not the declaratory ruling process.

¹ For a full procedural background for Docket No. P-DR-2016-001 see the *Order Denying Petition for Declaratory Rulings* at pages 1-5.

Order Denying Petition for Declaratory Rulings at 7. The Director continued:

Pursuant to Idaho Code § 42-1701A(3), Sun Valley Company may request a hearing before the Director on all matters addressed in the [Designation] Order and on any of the requests for declaratory rulings in the Petitions Sun Valley Company asserts have not been resolved by the [Designation] Order. Pursuant to the Idaho Administrative Procedure Act (Idaho Code § 67-5201 et seq.), Sun Valley Company may also seek judicial review of all matters addressed in the [Designation] Order and on any of the requests for declaratory rulings in the Petitions Sun Valley Company asserts have not been resolved by the [Designation] Order.

Id.

On November 16, 2016, SVC filed a *Petition Requesting a Hearing on Order Denying Petition for Declaratory Ruling* and a *Petition for Reconsideration of Final Order Denying Petition for Declaratory Ruling*. On December 1, 2016, the Director granted SVC's petition for hearing in Docket No. P-DR-2016-001

On November 16, 2016, SVC also filed its *Petition for Reconsideration of Final Order Designating the Eastern Snake Plain Aquifer Groundwater Management Area* and its *Petition Requesting a Hearing on Order Designating the Eastern Snake Plain Aquifer Groundwater Management Area* in Docket No. AA-GWMA-2016-001. On December 1, 2016, the Director granted SVC's petition for hearing in the administrative docket, Docket No. AA-GWMA-2016-001.

On March 20, 2017, SVC withdrew "its request for hearing and also withdr[ew] from participation in the hearing granted by the Director pursuant to [the *Order Granting Request for Hearing; Notice of Prehearing Conference*] dated December 1, 2016," in Docket No. P-DR-2016-001. *Notice of Withdrawal of Request for Hearing* at 1-2. On March 20, 2017, SVC also withdrew its request for hearing, and from its ongoing participation, in the administrative review Docket No. AA-GWMA-2016-001. *Notice of Withdrawal of Request for Hearing* at 1-2.

After the time of SVC's removal from both Docket Nos. P-DR-2016-001 and AA-GWMA-2016-001, the remaining intervening parties in Docket No. AA-GWMA-2016-001 were allowed to continue participation despite SVC's withdrawal. *See Order on Briefing; Notice of Additional Prehearing Conference*. The parties were, however, "limited to the issues raised in the original petition for hearing filed by [SVC]." *Id.* at 6. All subsequent activity related to the challenges originally raised by SVC to the designation of the ESPA GWMA occurred in the administrative review docket, Docket No. AA-GWMA-2016-001.

ANALYSIS

As the Director concluded in the *Order Denying Petition for Declaratory Rulings*, Idaho Code § 67-5232(2) authorizes agencies to address the questions raised in declaratory petitions through contested cases rather than declaratory proceedings. The contested case proceedings in

Docket No. AA-GWMA-2016-001 represents such an outcome. The issuance of the Designation Order, and SVC's granted request for a hearing thereon, created a forum for SVC and intervening parties to address the issues raised in the Petitions in this docket through the normal administrative review process. Despite SVC's withdrawal, Parties in Docket No. AA-GWMA-2016-001 were allowed to continue to litigate the issues raised by SVC in the Petitions. The Director has now issued two final, appealable orders as a result of the administrative review process related to the Designation Order, and any judicial review will occur in Docket No. AA-GWMA-2016-001. *See Order on Legal Issues* and *Final Order on Fact Issue* (Docket No. AA-GWMA-2016-001). As a result of the issues raised by SVC in its Petitions in this docket being handled through the administrative review process in Docket No. AA-GWMA-2016-001, and SVC's voluntary withdrawal from this docket, the issues raised in the Petitions in this docket are moot.

Therefore, it is proper to dismiss this docket as moot.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that Docket No. P-DR-2016-001 is dismissed as moot, with prejudice.

DATED 20th day of May 2020.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May 2020, the above and foregoing was served on the following by the method(s) indicated below:

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Kimberle English

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.