

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

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN WATER
DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002
Docket No. P-WRA-2017-003
Docket No. P-WRA-2017-004

**ORDER DISMISSING PETITIONS
FOR HEARING**

IN THE MATTER OF THE CITY OF
POCATELLO’S PETITION FOR HEARING
REGARDING WATER RIGHT
ACCOUNTING IN WATER DISTRICT 01

IN THE MATTER OF THE SHOSHONE-
BANNOCK TRIBES’ PETITION FOR
HEARING REGARDING WATER RIGHT
ACCOUNTING IN WATER DISTRICT 01

BACKGROUND

On August 18, 2017, Milner Irrigation District (“Milner”) submitted a letter to the Idaho Department of Water Resources (“Department”) asserting the “fall ‘storage reset’ for purposes of water right administration” in Water District 01 “is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219)” and “has in effect curtailed Milner’s natural flow water right 1-17 (November 14, 1916 priority date) in recent years.” Letter from Travis Thompson, Attorney for Milner Irrigation District, to Gary Spackman, Director of the Department, and Lyle Swank, Watermaster for Water District 01, at 2 (Aug. 18, 2017). Milner asked the Director and the Water District to “ensure Milner receives the appropriate natural flow as required by Idaho law.” *Id.*

On October 5, 2017, the Director initiated a contested case to address the issue of the fall reset of the Upper Snake River Basin reservoir water rights¹ and issued a *Notice of Prehearing*

¹ The water right numbers for the Upper Snake River Basin reservoir water rights are: 01-219, 01-2064, 01-2068, 01-4055, 01-10042, 01-10043, 01-10044, 01-10045, 01-10620, 01-10621A, 01-10621B, 01-10622, 01-10623, 21-2154, 21-2156, 21-2161, 21-4155, 21-12946, 21-13193, 21-13194, 21-10560, 21-13161, 25-

Conference; Order Setting Deadline for Petitions to Intervene. The document explained that Milner's letter is a petition as defined by the Department's Rule of Procedure 230 (see IDAPA 37.01.01.230); assigned the contested case Docket Number P-WRA-2017-002; scheduled a prehearing conference for November 13, 2017, and ordered that petitions to intervene must be filed by November 12, 2017. Numerous entities filed Petitions to Intervene, and the Director subsequently granted the petitions. See *Order Granting Petitions to Intervene* at 2 (Nov. 21, 2017).

On October 27, 2017, the Director sent a letter to the Water District 01 Watermaster regarding the fall reset of Upper Snake River Basin reservoir water rights. In the letter, the Director explained that "[t]he question of how the season of use defined by the decrees interacts with a reset date earlier than January 1 is the subject of a contested case now pending before the Director." Letter from Gary Spackman, Director of the Department, to Lyle Swank, Watermaster for Water District 01, at 1 (Oct. 27, 2017). The Director also instructed the Watermaster that, "[w]ithout having received evidence in the contested case to determine when a reset date might be appropriate, the Director must consult the four corners of the storage right decrees to determine the season of use for these rights." *Id.* The Director concluded that "Water District 01 should not have reset the reservoir rights to start accruing again prior to January 1." *Id.* The letter instructed the Watermaster "to recharacterize any flow accrued to the Snake River Reservoirs subsequent to September 15, 2017, as natural flow that was available for diversion by junior water rights" and that "[d]elivery of water to satisfy the onstream Snake River Reservoir water rights shall begin on January 1, 2018." *Id.* at 2.

On November 13, 2017, the City of Pocatello ("Pocatello") and the Shoshone-Bannock Tribes ("Tribes") submitted letters to the Director requesting a hearing on the Director's October 27, 2017 letter.

On November 20, 2017, the Director granted both Pocatello's and the Tribes' petitions for hearing. *Order Granting Petitions for Hearing; Order Staying Hearings* at 3. The Director assigned the requests Docket Numbers P-WRA-2017-003 and P-WRA-2017-004. The Director further ordered that hearings requested be "stayed pending the outcome of the contested case, Docket Number P-WRA-2017-002". *Id.*

On October 30, 2019, numerous water users from the Upper Snake River Basin filed a *Joint Motion to Amend Partial Decrees for Purpose of Diversion Rate and Rest Administrative Remarks* ("Joint Motion") with the Snake River Basin Adjudication District Court, requesting modification of partial decrees for the Upper Snake River Basin reservoir water rights. The Joint Motion sought to modify the partial decrees for the Upper Snake River Basin reservoir water rights to resolve the fall reset issue by adding the following remark to the other provision element of the water rights:

September 15th shall begin the annual period for water right accounting in the Upper Snake River Basin upstream of Milner Dam. The September 15th beginning date for this annual period is known as the 'reset date' for reservoir

7004, 25-14413A, and 25-14413B.

volumes. The ‘reset date’ allows previously satisfied reservoir water right volumes to begin filling again for the next annual storage volume period. The annual storage volume period will extend from September 15th to the following September 14th. Consistent with Section 8.3 of the 1990 Fort Hall Indian Water Rights Agreement, nothing in this provision is intended to impact the rights described and administered pursuant to that Section.

Joint Motion at 4.

On February 28, 2020, Judge Wildman executed an *Order Granting Motion to Alter or Amend Partial Decrees and Order of Amended Partial Decree* (“Order”). Judge Wildman determined unique and compelling circumstances justified amending the partial decrees. *Order* at 7. Judge Wildman stated:

With respect to the proposed reset remark, the Court finds [the remark is] necessary for the efficient administration of the rights. There is an open question as to the proper reset date for these water rights. Efficient administration of the rights requires a resolution of that question. Amending the Partial Decrees to include the proposed reset remark will resolve the reset issue and result in the efficient administration of the rights.

Id. The Court ordered that the condition be added to the decrees for the Upper Snake River Basin reservoir water rights. *Id.* at 10.

The time to appeal Judge Wildman’s Order has expired, and the Order is now final. The Director has reviewed the condition added to the partial decrees for the Upper Snake River Basin reservoir water rights and concludes the addition of the condition moots Milner’s original concern because the fall storage reset is now authorized in the partial decrees. Furthermore, because the condition establishes a fixed fall reset date within the four corners of the partial decrees, the Director concludes that the condition resolves the issues raised in the requests for hearing filed by Pocatello and the Tribe. Accordingly, the Director concludes the contested cases are now moot and should be dismissed.

ORDER

IT IS HEREBY ORDERED that, because the issues raised in the above-captioned contested cases are moot, the cases are DISMISSED.

DATED this 13th day of April 2020.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April 2020, I served a true and correct copy of the foregoing document by U.S. mail, postage prepaid to the following:

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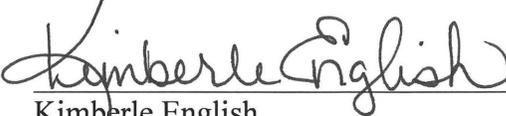
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Kimberle English

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.