

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

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|---|---|------------------------|
| IN THE MATTER OF APPLICATION |) | |
| FOR TRANSFER NO. 79560 IN THE NAME |) | |
| OF NORTH SNAKE GROUND WATER DIST., |) | ORDER ON |
| MAGIC VALLEY GROUND WATER DIST., |) | RECONSIDERATION |
| AND SOUTHWEST IRRIGATION DIST. |) | |
| _____ |) | |

BACKGROUND

On February 19, 2015, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Final Order Approving Application for Transfer* (“Transfer Order”) in the above-captioned matter. On February 25, 2015, the Idaho Ground Water Appropriators, Inc. (“IGWA”) filed a *Corrected Petition for Reconsideration* (“Petition”). IGWA requests that the Director amend the Transfer Order to address concerns related to the following provision:

IT IS FURTHER ORDERED that, as a condition of approval, IGWA and Southwest Irrigation District will continue into the future, aquifer enhancement activities sufficient to offset 10 cfs of depletion of flow in the Snake River between Kimberly and King Hill. Prior to the start of each irrigation season, IGWA must provide documentation of aquifer enhancement activities from the previous year to establish that sufficient mitigation will be provided in the upcoming season. If sufficient mitigation is not provided, the transfer will be void.

Petition at 1.

ANALYSIS

IGWA asserts that, because injury may occur as a result of the approved transfer in the event of a violation of the Swan Falls minimums, “mitigation should be required only if the Swan Falls minimums are breached.” *Id.* at 2. In examining all the evidence and available information and evaluating Application for Transfer No. 79560 (“Application”) in accordance with Idaho Code § 42-222, the Director determined the Application could only be approved upon the condition that IGWA must mitigate depletion of Snake River flows that will occur as a result of the transfer. The Director will not amend the Transfer Order to allow IGWA to only mitigate depletion of Snake River flows due to the transfer in the event Swan Falls minimums are violated.

IGWA argues that “mitigation to avoid injury to Idaho Power should not be limited to aquifer enhancement activities.” *Petition* at 2. Expert witness reports and testimony presented in

this matter only analyzed and proposed mitigation for potential injury to other water rights through IGWA and Southwest Irrigation District's aquifer enhancement activities. The Director will not amend the Transfer Order to allow the required mitigation to be accomplished through speculative mitigation activities for which there is no support in the record. The Director will not alter the condition in the Transfer Order requiring IGWA to mitigate depletion of flows in the Snake River due to the transfer through aquifer enhancement activities.

IGWA also asserts the Director should amend the Transfer Order to order that "[n]on-use of the mitigation portion of this right shall not result in forfeiture pursuant to Idaho Code § 42-223(10)." *Petition* at 3. The Director will not amend the Transfer Order to expressly identify a defense to forfeiture. . Defenses to forfeiture set forth in Idaho Code § 42-223 are statutorily provided and need not be included in the Transfer Order.

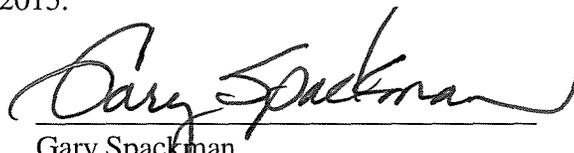
IGWA also argues "IGWA and [Southwest Irrigation District] should not be required to provide mitigation in excess of the amount of water delivered to Billingsley Creek from Magic Springs." *Petition* at 2. The Director concludes that IGWA and Southwest Irrigation District should not be required to mitigate in excess of the amount of water diverted from Magic Springs pursuant to the approved transfer. The Director will modify the Transfer Order accordingly.

Finally, IGWA asserts that, in the event the required mitigation is "not provided, the transfer should be suspended rather than voided completely." *Petition* at 2. The Director concludes that, in the event IGWA fails to document sufficient mitigation through aquifer enhancement activities as required by the Transfer Order, diversions will not be authorized pursuant to the transfer for the year (April 1 through March 31) in which documentation is lacking. The Director will modify the Transfer Order accordingly.

ORDER

IT IS HEREBY ORDERED that the Petition is DENIED in part and GRANTED in part. The Director will issue an *Amended Final Order Approving Application for Transfer* amending the conclusions of law and order section consistent with the foregoing.

Dated this 18th day of March 2015.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March 2015, true and correct copies of the document described below was served on the parties by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

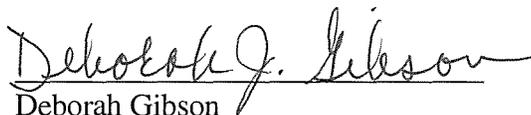
Document Served: Order on Reconsideration

Randall C. Budge
T.J. Budge
Racine Olson Nye Budge & Bailey
PO Box 1391
Pocatello ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

Fritz Haemmerle
Haemmerle & Haemmerle
PO Box 1800
Hailey ID 83333
fxh@haemlaw.com

J. Justin May
May Browning & May
1418 W. Washington
Boise ID 83702
jmay@maybrowning.com

Robyn Brody
Brody Law Office
P.O. Box 554
Rupert, ID 83350
robynbrody@hotmail.com


Deborah Gibson
Admin. Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, 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.

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: a) of 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.