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DEPARTMENT OF
WATER RESOURCES

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For the U.S. Department of the Interior, Bureau of Reclamation

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

IN THE MATTER OF DISTRIBUTION)	
OF WATER TO VARIOUS WATER RIGHTS)	RECLAMATION'S PETITION
HELD BY OR FOR THE BENEFIT OF)	FOR HEARING ON FIFTH
A&B IRRIGATION DISTRICT, AMERICAN)	SUPPLEMENTAL ORDER
FALLS RESERVOIR DISTRICT #2, BURLEY)	AMENDING REPLACEMENT
IRRIGATION DISTRICT, MILNER)	WATER REQUIREMENTS FINAL
IRRIGATION DISTRICT, MINIDOKA)	2006 & ESTIMATED 2007
IRRIGATION DISTRICT, NORTH SIDE)	
CANAL COMPANY, AND TWIN FALLS)	
CANAL COMPANY)	
)	
)	
)	

INTRODUCTION

The U.S. Department of the Interior, Bureau of Reclamation (Reclamation), by and through its attorney Kathleen Marion Carr, Office of the Field Solicitor, pursuant to Idaho Code § 42-1701A(3) and IDAPA 37.01.01.230 hereby files its petition requesting a hearing on the *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007* issued by the Director of the Idaho Department of Water Resources (IDWR) on May 23, 2007. (“*Fifth Supplemental Order*”).

PETITION

1. Reclamation is a party to the above-captioned administrative proceeding. It has previously requested a hearing on the Director's Amended Order of May 2, 2005, *see e.g., Reclamation's Petition for Hearing Regarding the Director's Amended Order of May 2, 2005 (May 17, 2005)*, and contested the process used by IDWR for approving water replacement plans. *See e.g., Reclamation's Protest to Idaho Ground Water Appropriators' Initial Plan for Providing Replacement Water (May 6, 2005) and Reclamation's Reply to Idaho Ground Water Appropriators' Response to Objections to Plan for Providing Replacement Water (June 1, 2005)*. To date, neither Reclamation nor any other party to this proceeding has had an opportunity to have a hearing on the numerous legal and factual issues they have raised with respect to the conjunctive administration of junior ESPA ground water rights and the factual findings and conclusions of law contained in the Director's May 2, 2005, Order and subsequent administration orders.

2. On May 23, 2007, the Director issued his *Fifth Supplemental Order* wherein he made a final determination of material injury for 2006 and an estimated determination of material injury for 2007. The *Fifth Supplemental Order* also expressly adopts and incorporates the "Conclusions of Law . . . [and] Requirements of the May 2, 2005 order, as well as all subsequent orders related thereto, as applicable." *Fifth Supplemental Order pp. 15, 16*.

3. On June 5, 2007, the Director held a status conference in the above-captioned proceeding. At the status conference, the Director indicated that he intended to schedule a single hearing to address all the issues raised by the parties with respect to the May 2, 2005, order and subsequent orders, including, the recently issued *Fifth Supplemental Order*.

4. Because the *Fifth Supplemental Order* was designated a final order of the agency, Idaho Code § 42-1701A(3) requires persons contesting the decision request a hearing before the Director. Accordingly, Reclamation hereby requests a hearing before the Director concerning the *Fifth Supplemental Order*. The grounds for this request are set forth in the numerous petitions, protests, briefs, and/or other pleadings previously filed by Reclamation in this proceeding, which are expressly incorporated herein as if fully set out and restated. In addition, the method of administration employed by the Director as set out in the *Fifth Supplemental Order* and prior orders fails to account and mitigate for multiple year impacts of ground water pumping and fails to make proper determinations of reasonable carryover. Reclamation reserves the right to raise such additional issues pending completion of discovery and related pretrial matters.

Based on the foregoing, Reclamation requests a hearing in this matter be scheduled consistent with the direction set out by the Director at the June 5, 2007, status conference.

Dated this 6 day of June, 2007.


KATHLEEN MARION CARR

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of June 2007, I served a true and correct copy of the foregoing on the following by U.S. Mail Postage Prepaid:

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A handwritten signature in cursive script that reads "Kathleen Marion Carr". The signature is written in black ink and is positioned above a horizontal line.

Kathleen Marion Carr