

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER)
TO VARIOUS WATER RIGHTS HELD BY OR FOR)
THE BENEFIT OF 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)
)
(Water District Nos. 34, 110, 120, and 130))
_____)

**ORDER DENYING JOINT
MOTION TO VACATE
HEARING ON IGWA'S 2007
REPLACEMENT WATER
PLAN**

On May 23, 2007, the Director of the Department of Water Resources (“Director” or “Department”) issued his *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007* (“May 23 Order”). Among other things, the May 23 Order conditionally approved the Idaho Ground Water Appropriators, Inc.’s (“IGWA”) 2007 replacement water plan, as amended (“2007 Replacement Plan”). In addition to conditionally accepting the 2007 Replacement Plan, the Director granted the Surface Water Coalition’s request for hearing on the Plan. A scheduling order issued contemporaneously with the May 23 Order set a hearing on the 2007 Replacement Plan for June 21, 2007. *Notice of Status Conference and Notice Setting Hearing* (May 23, 2007). A status conference to discuss the June 21 hearing was set for June 5, 2007.

On June 4, 2007, IGWA and the City of Pocatello (“City”) requested that the hearing on the 2007 Replacement Plan be vacated. *Pocatello’s and IGWA’s Joint Motion to Vacate June 21, 2007 Hearing on SWC’s Motion to Dismiss IGWA’s Replacement Plan* (“Motion to Vacate”). The Motion to Vacate argued that a hearing was not necessary for various reasons. First, the Motion to Vacate stated that the Surface Water Coalition’s previous protest and motion to dismiss the 2007 Replacement Plan are premature or have been mooted by the Director’s conditional approval of the Plan. Second, until a hearing has been held on all orders issued by the Director in the overall matter of the Surface Water Coalition’s call for delivery of senior natural flow and storage water rights, it would not be possible to have a hearing on the adequacy or lawfulness of the 2007 Replacement Plan. Finally, IGWA and the City stated their concern that the Surface Water Coalition’s protest and motion to dismiss the 2007 Replacement Plan is “merely another diversionary tactic down which the SWC would like to take the Department and the ground water users in order to avoid a hearing on the May 2, 2005 Order.” *Motion to Vacate* at 2.

As argued, however, by the Surface Water Coalition in its June 4, 2007 *Petition for Reconsideration and Review of Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007*, there are any number of issues that should be addressed by the Director regarding the 2007 Replacement Plan, particularly the Plan’s ability to

provide certainty to members of the Surface Water Coalition that replacement water will be made available in a timely manner to mitigate for material injury.

On June 5, 2007, the Director conducted a status conference on the June 21 hearing. During the status conference, the parties requested that the Director provide guidance on the purpose and scope of the June 21 hearing on the 2007 Replacement Plan.

Based on argument raised through prior briefing and discussion at the June 5 status conference, the Director should not vacate the hearing on the 2007 Replacement Plan. The 2007 Replacement Plan was conditionally approved by the Director upon a subsequent showing by IGWA of the Plan's ability to provide timely, in-season replacement water and reasonable carryover water. A hearing on the 2007 Replacement Plan is appropriate in order to provide the Director with additional information on timely acquisitions of water and other interested parties the opportunity to cross-examine any witnesses called by IGWA in support of its Plan and raise argument.

The hearing on the 2007 Replacement Plan is limited in scope to presentation of information regarding the implementation of the Plan by IGWA to demonstrate that timely, in-season replacement water and reasonable carryover water can be provided to members of the Surface Water Coalition. IGWA should be prepared to identify with specificity the water it has acquired, the quantities it has acquired, and the means by which such water can be timely delivered to members of the Surface Water Coalition. Based on IGWA's concerns that disclosure of its sources of water may prejudice its subsequent acquisition, the Director may review such information confidentially, to the extent that argument at the hearing supports such review.

The hearing on IGWA's 2007 Replacement Plan will not include argument or presentation of evidence on any other orders issued by the Director, or the Director's method and computation of material injury.

IGWA requested at the status conference on June 5, 2007, that if the hearing is not vacated it be rescheduled to June 22, 2007, in order to accommodate the attendance of IGWA's principal witness.


ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

The City of Pocatello and the Idaho Ground Water Appropriators' *Joint Motion to Vacate June 21, 2007 Hearing on SWC's Motion to Dismiss IGWA's Replacement Plan* is DENIED.

The hearing requested by the Surface Water Coalition on IGWA's 2007 Replacement Plan will be rescheduled for June 22, 2007.

DATED this 11th day of June, 2007.



DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

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