

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 Districts No. 120 and No. 130) )  
\_\_\_\_\_ )

**STATUS CONFERENCE  
MINUTES**

A status conference concerning the above entitled matter was held October 1, 2007. The parties and other interest entities appeared through the following representatives: Travis Thompson and Paul Arrington, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company; C. Tom Arkoosh, American Falls Reservoir District; W. Kent Fletcher (by telephone), Minidoka Irrigation District; Kathleen Carr, U.S. Department of the Interior, BOR; John K. Simpson, SWC; Daniel V. Steenson, Blue Lakes; Michael C. Creamer, Idaho Dairymen's Association; Sarah A. Klahn, City of Pocatello; Dandice McHugh and Randy Budge, Lynn Tominaga, IGWA; Chris Bromley, Phil Rassier, IDWR; Justin May (by telephone), Rangen; Ray Young (by telephone), Simplot; Michael Gilmore (by telephone), State Attorney General.

The following matters were resolved:

1. SWC has filed a motion in limine concerning the testimony of John Church. The hearing officer reserves ruling on the relevance of testimony by John Church but recommends that the parties proceed with whatever discovery is necessary to establish a record of any testimony this witness might give so a complete record is developed for any reviewing tribunal. If necessary any discover deadlines for this witness shall be modified to complete discovery.
2. The Director's May 2, 2005, Amended Order is the foundational order at issue in this matter. Subsequently, the Director has issued orders, letters, and

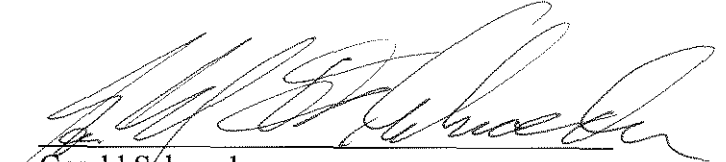
memoranda to implement the May 2, 2005, Order in administering SWC's delivery calls in 2005, 2006, and 2007. The status of the 2007 implementation is still outstanding. The validity of the implementation orders will in some respects be dependent upon the validity of the foundational order. Rulings on the foundational order may render some of the issues in the implementation orders and directions moot. Consequently, the parties and the hearing officer will attempt to address the determinations in the foundational order first and proceed to the implementation orders and directions as necessary. The order of presentation will be addressed further in pre-trial conference.

3. The hearing officer incorporates the comments made in the early status conference concerning the Clear Springs and Blue Lakes delivery calls. That is, if the Director has decided a factual issue and no party has noted an objection, that fact will be deemed established. If an objection has been made to a fact or conclusion in the May 3, 2005, Director's Order it is not necessary to repeat that objection to the same fact or conclusion in an implementation order.
4. The City of Pocatello has filed a Motion for Order Regarding Hearing Efficiencies. SWC and the U. S. Department of the Interior, Bureau of Reclamation, have submitted responses. The hearing officer makes the following determinations: a) The scope of the record is defined by Idaho Code Section 67-5249 and IDWR Procedural Rule 650. Those provisions shall govern the scope of the record in these proceedings; b) Idaho Code Section 67-5251 and IDWR 600 and 602 address the admission of additional evidence and the scope of that admission. Those provision shall govern the admission of evidence in these proceedings; c) The burdens and presumptions applicable in these proceedings has been defined by the Idaho Supreme Court, see, e.g. *AFRD # 2 v. IDWR*, 154 P. 3d 433 (2007). The hearing officer will apply those burdens and presumptions defined by the Supreme Court. Any party may submit authority on any particular issue that party believes has not been addressed by the Supreme Court; d) Separate Counsel for each party may

cross-examine adverse witnesses but shall endeavor to avoid repetition of questions asked in previous cross-examination, except to clarify an answer previously given. The hearing officer will restrict repetitive examination.

5. Lay witnesses shall be disclosed by November 14, 2007. Pre-filed testimony shall be filed on or before January 4, 2008.

Dated this 10 day of October, 2008.



Gerald Schroeder  
Hearing Officer

## CERTIFICATE OF SERVICE

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

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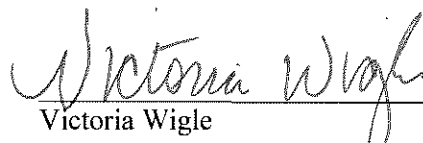
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