

**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

Docket No. CM-DC-2010-001

**ORDER DENYING JERRY D.
AND VALERIE H. BINGHAMS’
PETITION FOR
RECONSIDERATION AND
REQUEST FOR HEARING**

BACKGROUND

On July 19, 2023, the Department issued its *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Methodology Order*”). The *Methodology Order* established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”).

On July 21, 2026, the Director issued the *Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5-6)* (“*July As-Applied Order*”). The *July As-Applied Order* applied steps 5 and 6 of the *Methodology Order* and continued the effect of the *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued by the Director on May 14, 2026.

Step 5 of the *Methodology Order* addresses the final injury determination to reasonable carryover for members of the SWC. Step 5 states:

If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall. If the storage allocations held by members of the SWC do not fill, within fourteen (14) days following the publication of Water District 01’s initial storage report . . . the volume of water secured by junior ground water users to fulfill the reasonable carryover shortfall shall be made available to injured members of the SWC.

Methodology Order, at 43.

Step 6 of the *Methodology Order* states:

Approximately halfway through the irrigation season, but following the events described in Step 5, the Director will, for each member of the SWC: (1) recalculate RISD [Reasonable In-Season Demand]; (2) issue a revised FS [Forecast Supply]; and (3) estimate the Time of Need date.

Id. (footnote omitted).

Following the application of steps 5 and 6 of the *Methodology Order*, the Director issued the *July As-Applied Order*, predicting a July in-season demand shortfall of 741,100 acre-feet. *July As-Applied Order*, at 11. Due to the predicted shortfall, the Director ordered:

The May 14, 2026 *Curtailment Order*, as modified by the June 17, 2026 *Order Amending Curtailment List to Include Unmitigated Ground Water Rights*, remains in full force and effect. All ground water users holding water rights listed in Attachment A to the May 14, 2026 *Curtailment Order* and listed in the June 17, 2026 *Order Amending Curtailment List to Include Unmitigated Ground Water Rights* bearing priority dates junior to October 11, 1900, shall continue to be curtailed from diversion and use of ground water pursuant to those water rights unless they are mitigating in accordance with an approved mitigation plan or are notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

Id. at 11–12.

On August 3, 2026, Jerry and Valerie Bingham (“Binghams”) filed with the Department, *Jerry D. Bingham’s and Valerie H. Bingham’s Petition for Reconsideration and Request for Hearing* (“*Petition and Request*”), challenging the *July As-Applied Order*. *Petition and Request*, at 1.

On August 12, 2026, Idaho Ground Water Appropriators, Inc. (“IGWA”) filed *IGWA’s Response to Jerry D. Bingham’s and Valerie H. Bingham’s Petition for Reconsideration and Request for Hearing* (“*Response*”). The *Response* argues the Binghams fail to identify any error in the *July As-Applied Order* that warrants reconsideration. *Response*, at 1.

ANALYSIS

The Binghams’ filing is styled as both a petition for reconsideration and a request for hearing. While the analysis of the petition for reconsideration and the request for hearing is largely similar, the Director will consider the merits of each request separately.

1. The Binghams identify no basis to reconsider the *July As-Applied Order*.

Idaho Code § 67-5246(4) governs petitions for reconsideration of final orders. It states:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final 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.

The *Petition and Request* filed by the Binghams states that they seek reconsideration of the *July As-Applied Order*. The *July As-Applied Order* applied Steps 5 and 6 of the *Methodology Order*. *July As-Applied Order*, at 1–2, 11. Step 5 addresses the final determination of injury to

reasonable carryover. *July As-Applied Order*, at 1; *see also Methodology Order*, at 43. Step 6 requires the Director to recalculate the reasonable in-season demand and revise the forecast supply. *July As-Applied Order*, at 2; *see also Methodology Order*, at 43. The *July As-Applied Order* made the determinations required by those steps. *July As-Applied Order*, at 11.

The fundamental problem with the Bingham's petition for reconsideration is that the Bingham's do not identify a finding of fact, conclusion of law, calculation, or directive in the *July As-Applied Order* that they contend is erroneous and should be reconsidered. They do not challenge the Director's Step 5 determination, the recalculated reasonable in-season demand, the revised forecast supply, the resulting in-season demand shortfall, or the factual information and calculations underlying those determinations. Instead, the three issues identified in the *Petition and Request* concern the structure of the underlying methodology and the allocation of mitigation responsibilities—matters not determined by the *July As-Applied Order*. *See Petition and Request*, at 2–3.

The Bingham's own description of their challenge confirms this conclusion. They state that their “issues do not challenge the Director's authority to administer the Delivery Call or mitigation requirements for In-Season Demand Shortfalls,” but instead “challenge whether the current methodology allocates mitigation responsibilities in a manner that is consistent, priority-based, and equitable.” *Petition and Request*, at 1–2. Thus, although the Bingham's say they seek reconsideration of the *July As-Applied Order*, the substance of their challenge is directed to the *Methodology Order* and framework for allocating mitigation responsibilities under the SWC Delivery Call.

A petition for reconsideration of the *July As-Applied Order* must identify a basis for the Director to reconsider a determination made in the *July As-Applied Order*. The Bingham's identify none. Their three stated issues instead challenge the *Methodology Order* and the framework for allocating mitigation responsibilities under the SWC Delivery Call—matters that were not established or decided in the *July As-Applied Order*. The methodology underlying the SWC Delivery Call has been the subject of extensive litigation. The Idaho Supreme Court has affirmed that the Director may employ a baseline methodology as a starting point for administration of the interconnected surface and ground water rights at issue in the SWC Delivery Call. *In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013). In 2023, following an administrative hearing concerning the revisions to the methodology, the Director issued the current *Methodology Order* as a final order of the Department. Certain aspects of the *Methodology Order* were challenged on judicial review, and Judge Wildman affirmed the Department. *City of Idaho Falls v. Idaho Dep't of Water Res.*, No. CV01-23-13238 (Ada Cnty. Dist. Ct. Idaho 2024); *Memorandum Decision and Order*, at 27, *Idaho Ground Water Appropriators Inc. v. Idaho Dep't of Water Res.*, No. CV01-23-13173 (Ada Cnty. Dist. Ct. Idaho May 31, 2024).¹ The Bingham's cannot use a petition for reconsideration of the *July As-Applied Order* to collaterally challenge determinations made in the *Methodology Order*. Because the

¹ In No. CV01-23-13173, one challenge remains pending because the matter was stayed during proceedings on reconsideration.

Binghams identify no error in the findings, calculations, conclusions, or directives contained in the *July As-Applied Order*, the *Petition for Reconsideration* should be denied.

2. The Binghams' request for hearing does not state grounds for contesting the *July As-Applied Order*.

Idaho Code § 42-1701A(3) governs petitions requesting a hearing before the Department. It states, in pertinent part:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, 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.

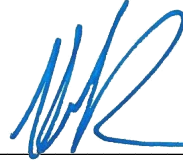
Idaho Code § 42-1701A(3) therefore entitles a person aggrieved by an action of the Director, who has not previously been afforded an opportunity for a hearing on the matter, a hearing to contest the action. The petition must state the grounds for contesting the Director's action.

The Binghams request a hearing on the *July As-Applied Order*. As discussed above, however, the *Petition and Request* does not identify a determination made in the *July As-Applied Order* that the Binghams seek to contest. They do not challenge the Director's Step 5 determination, recalculation of reasonable in-season demand, revised forecast supply, resulting in-season demand shortfall, or the factual information and calculations underlying those determinations. Instead, the Binghams expressly state that their issues "challenge whether the current methodology allocates mitigation responsibilities in a manner that is consistent, priority-based, and equitable." *Petition and Request*, at 2. The grounds stated in the *Petition and Request* thus concern the validity and structure of the *Methodology Order* and the framework for allocating mitigation responsibilities under the SWC Delivery Call, not the determinations made in the *July As-Applied Order*. The distinction is significant under Idaho Code § 42-1701A(3). To the extent the Binghams seek a hearing to contest the determinations made in the *July As-Applied Order*, their petition does not state grounds for contesting those determinations. To the extent they instead seek a hearing to challenge the *Methodology Order*, Idaho Code § 42-1701A(3) does not permit the Binghams to obtain a hearing on the *Methodology Order* merely by directing their request at a later as-applied order. The *Methodology Order* was issued in 2023, following an administrative hearing pursuant to Idaho Code § 42-1701A(3), and has already been subject to judicial review. Because the Binghams state no grounds for contesting the determinations made in the *July As-Applied Order*, the request for hearing should be denied.

ORDER

IT IS HEREBY ORDERED that *Jerry D. Bingham's and Valerie H. Bingham's Petition for Reconsideration and Request for Hearing* is DENIED.

Dated this 24th day of August 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

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EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION OF A FINAL ORDER

(To be used in connection with Final Orders, reconsideration of which is now denied,
issued by the Director or the Board)

The accompanying document is an **Order Denying Petition for Reconsideration** of the "**Final Order**" issued previously in this proceeding by the agency head of the Idaho Department of Water Resources ("Department") or the Idaho Water Resource Board ("Board") pursuant to Idaho Code § 67-5246.

The following statements describe the procedures and time limits for seeking appeal of the final order previously issued in this proceeding:

APPEAL TO DISTRICT COURT

(See Idaho Code §§ 67-5270 through 67-5279)

Within twenty-eight (28) days after the service date of the presiding officer's denial of a petition for reconsideration, any party may file a petition for judicial review of the final order with a district court. Filing an appeal to a district court does not in itself stay the effectiveness or enforcement of the final order appealed.

FILING AND SERVICE

(See I.R.C.P. 84)

Any petition for judicial review filed in connection with an appeal of the final order shall be served on the agency and all parties to the administrative proceeding in accordance with Idaho Rule of Civil Procedure 84.