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DEPARTMENT OF WATER RESOURCES

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and Wendell*

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

IN THE MATTER OF DESIGNATING THE)	
EASTERN SNAKE PLAIN AQUIFER)	
GROUND WATER MANAGEMENT AREA)	
)	CITIES OF BLISS, BUHL,
)	BURLEY, CAREY, DECLO,
)	DIETRICH, GOODING,
)	HAZELTON, HEYBURN,
)	JEROME, PAUL, RICHFIELD,
)	RUPERT, AND WENDELL
)	PETITION FOR
)	RECONSIDERATION
)	

COME NOW the Cities of Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell (hereinafter “Coalition of Cities”), pursuant to Idaho Code § 67-5246 and IDAPA 37.01.01.740, and hereby file this *Petition for Reconsideration* (“Petition”) regarding the Director’s *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (November 2, 2016) (“Designation Order”).

This Petition requests that the Director reconsider the following conclusions concerning the “plan” for the ESPA GWMA:

Idaho Code § 42-233b does not establish or require a specific procedure for developing a ground water management plan. . . . Because of the physical size of the ESPA and the number of potentially interested water users, it will be necessary for the Director to define a procedure for seeking water user input and developing a ground water management plan. The Director will address these matters in a separate order.

Designation Order at 24, ¶ 26 (emphasis added).

The Director will issue a separate order addressing the procedure for developing pursuant to Idaho Code § 42-233b a ground water management plan for the ESPA Ground Water Management Area.

Designation Order at 25, ¶ 3 (emphasis added).

The Director’s decision to issue a separate order (“Procedural Order”) governing the procedure for developing an ESPA GWMA management plan is contrary to Idaho law.

Sitting in its capacity as a court on review of a final administrative order of the Idaho Department of Water Resources (“IDWR”), the Fifth Judicial District Court examined a similar decision to issue separate orders, holding such procedure to be unlawful:

In the September 5, 2008, *Final Order*, the Director stated his decision to issue an additional *Final Order* at a later date in response to the Hearing Officer’s *Recommended Order*:

25. Because of the need for ongoing administration, the Director will issue a separate, final order before the end of 2008 detailing his approach for predicting material injury to reasonable in-season demand and reasonable carryover for the 2009 irrigation season. An opportunity for hearing on the order will be provided.

The SWC argues that the failure to address this issue in the *Final Order* was an abuse of discretion. This Court agrees.

In the *Recommended Order*, the Hearing Officer found that adjustments should be made to the methodologies for determining material injury and reasonable carryover for future years. R. Vol. 37 and 7090. The Director adopted this conclusion, but did not address a new method in his September 5, 2008 *Final*

Order. R. Vol. 39 at 7382. The process for determining material injury and reasonable carryover is an integral part of the Hearing Officer's *Recommended Order*, and the issues raised in the delivery call. The Director abused his discretion by not addressing and including all of the issues raised in this matter in one *Final Order*. Styling the *Final Order* as two orders issued months apart runs contrary to the Idaho Administrative Procedures Act and IDWR's Administrative Rules. See I.C. §§ 67-5244, 67-5246, 67-5248 and IDWR Administrative Rules 720 and 740.

Order on Petition for Judicial Review, Case No. 2008-551, p. 32 (Fifth Jud. Dist. July 24, 2009) (J. Melanson) (emphasis added).

Importantly, the Court explained the rationale for issuance of a complete final order, as opposed to separate orders:

In addition, the issuance of separate "Final Orders" undermines the efficacy of the entire delivery call process, including the process of judicial review. Such a process requires certainty and definiteness as to the *Final Order* issues, so that any review of the *Final Order* can be complete and timely.

Id. (emphasis added).

The final order at issue before Judge Melanson was a precursor to the Director's decision to designate the ESPA GWMA. *Designation Order* at 19 (explaining the "Need" for the ESPA GWMA due to prior "delivery calls" not being an "efficient or effective means of addressing the underlying problem of chronic declines in the ESPA storage and spring discharges"). Just as the Director's SWC *Methodology Order* was groundbreaking and unprecedented in its findings of facts and conclusions of law, so too is the Director's ESPA GWMA *Designation Order*. Like the SWC before it, the Coalition of Cities finds itself with an incomplete final order that does not address all issues upon which to assess what impact the proposed ESPA GWMA will have upon the Coalition of Cities' ability to divert water.

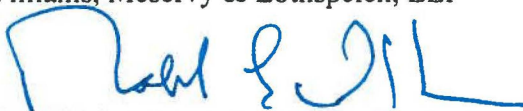
While the Coalition of Cities readily accepts the Director's offer to participate in "development of the ground water management plan," *Designation Order* at 24, the Coalition of Cities does not know what the Director's "separate order addressing the procedure for

opportunity to review the *Designation Order* at the same time as the yet-to-be-issued *Procedural Order*, the Coalition of Cities are left in the untenable position of not having a complete understanding of the Director's rationale. *Order on Petition for Judicial Review* at 32 ("the issuance of separate 'Final Orders' undermines the efficacy of the entire . . . process. Such a process requires certainty and definiteness as to the *Final Order* issues, so that any review of the *Final Order* can be complete and timely).

Based on the foregoing, the Coalition of Cities respectfully petitions the Director to withdraw the *Designation Order* and issue one final order that addresses findings of fact and conclusions of law pertaining to the proposed designation of the ESPA GWMA as well as the procedure for creation of the proposed ESPA GWMA management plan.

Respectfully submitted this 16th day of November, 2016.

Williams, Meservy & Lothspeich, LLP



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CHRIS M. BROMLEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2016, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES PO Box 83720 Boise, ID 83720	<input type="checkbox"/> US Mail, Postage Paid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Hand-Delivered <input type="checkbox"/> Electronic Mail
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