

DEC 20 2016

DEPARTMENT OF
WATER RESOURCES

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**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

) AA-GWMA-2016-001
)
) **CITIES OF BLISS, BUHL,**
) **BURLEY, CAREY, DECLO,**
) **DIETRICH, GOODING,**
) **HAZELTON, HEYBURN,**
) **JEROME, PAUL, RICHFIELD,**
) **RUPERT, AND WENDELL**
) **PETITION FOR**
) **CLARIFICATION**
)

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 IDAPA 37.01.01.770, and hereby file this *Petition for Clarification* (“Petition”) regarding the Director’s *Order Granting Request for Hearing; Notice of Pre-Hearing Conference* (“Order Granting Hearing”) (December 2, 2016).

BACKGROUND

On November 2, 2016, the Director of the Idaho Department of Water Resources (“Director” or “IDWR”) signed the *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (November 2, 2016) (“Designation Order”).

On November 16, 2016, the Coalition of Cities filed a *Petition for Reconsideration* of the Designation Order with IDWR concerning the “plan” for the ESPA GWMA, asserting that the Director’s decision to issue a separate procedural order for the ESPA GWMA management plan was contrary to Idaho law.

On November 16, 2016, the City of Pocatello filed a *Petition for Reconsideration*.

On November 16, 2016, the Sun Valley Company (“SVC”) filed a *Petition for Reconsideration of Final Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area*.

On November 16, 2016, SVC filed a *Petition Requesting a Hearing on Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area*.

On December 1, 2016, the Director granted SVC’s November 16, 2016 request for hearing. While the Order Granting Hearing referenced the outstanding petitions for reconsideration, it did not state what occurred with the petitions for reconsideration upon the granting SVC’s request for hearing.

REQUEST FOR CLARIFICATION

Pursuant to Idaho law, IDWR had twenty-one days to “dispose of” the Coalition of Cities’ Petition for Reconsideration. Idaho Code § 67-5246; *A&B Irrig. Dist. v. Idaho Dept. of Water Res.*, 154 Idaho 652, 301 P.3d 1270 (2012). The Coalition of Cities’ Petition for Reconsideration was filed on November 16, 2016; therefore, the Director had until December 7,

2016 to reach a decision on the merits. In the absence of a decision, the Coalition of Cities' Petition for Reconsideration is deemed denied by operation of law. Idaho Code § 67-5246(5)(b); *A&B* at 656, 301 P.3d at 1274 ("A petition for reconsideration is not disposed of until there is a decision on the merits of the petition. . . . Because IDWR's Director did not issue a written decision disposing of the petition for reconsideration . . . the petition was deemed denied."). Prior to the expiration of the prescribed twenty-one day time period to dispose of the Coalition of Cities' Petition for Reconsideration, the Director did, on December 1, 2016, sign the Order Granting Hearing, which did reference the pending petitions for reconsideration, but did not address their merits.

Based upon IDAPA 37.01.01.770, the Coalition of Cities petitions the Director to clarify the his decision on the issue raised in the Coalition of Cities' Petition for Reconsideration – namely, whether the Director will withdraw 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 GWMA Plan. The Coalition of Cities respectfully requests that the Director expedite his decision on this Petition for Clarification, as the filing of this petition does "not suspend or toll the time for . . . appeal of the order." IDAPA 37.01.01.770. If the Coalition of Cities' Petition for Clarification was denied by operation of law, then the Coalition of Cities has twenty-eight days from said denial to file for judicial review. I.R.C.P. 84(b).

Respectfully submitted this 20th day of December, 2016.

Williams, Meservy & Lothspeich, LLP

McHugh Bromley, PLLC



ROBERT E. WILLIAMS

- for -



CHRIS M. BROMLEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2016, I served a true and correct copy of the foregoing document by Hand Delivery upon the Director of the Idaho Department of Water Resources, and by electronic mail upon all other recipients:

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