

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 DESIGNATING APRIL 2016 FORECAST SUPPLY ORDER FINAL AS MODIFIED
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BACKGROUND

On April 19, 2016, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Fourth Amended 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 April 19, 2016, the Director issued the *Final Order Regarding April Forecast Supply (Methodology Steps 1-3)* (“April Forecast Supply Order”), which applied steps 1, 2, and 3 of the Methodology Order. The Director predicted an in-season demand shortfall (“DS”) of 44,200 acre-feet. *April Forecast Supply Order* at 3-4. The Director ordered that, by May 3, 2016, ground water users with consumptive water rights “junior to February 8, 1989, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 44,200 acre-feet in accordance with an approved mitigation plan.” *Id.* at 6. The Director noted that A&B Irrigation District (“A&B”) has an approved mitigation plan in place for its ground water rights (filed in Docket No. CM-MP-2015-003) and determined that A&B’s “proportionate share of the predicted DS of 44,200 acre-feet is 3,463 acre-feet.” *Id.* at 5, n.4.

On May 2, 2016, A&B submitted to the Department *A&B Irrigation District’s Petition for Reconsideration and Request for Hearing Re: April 2016 As Applied Order* (“Petition”). A&B asserted the Director miscalculated A&B’s proportionate share of the predicted DS and requested the Director “recalculate the ‘proportionate impact’ based upon the predicted impact of A&B’s ground water rights junior to February 8, 1989 on the Near Blackfoot to Minidoka reaches of the Snake River.” *Petition* at 2-3.

On May 11, 2016, the Director issued an *Order on Petition for Reconsideration and Request for Hearing* (“Order on Reconsideration”), recalculating A&B’s proportionate share of the predicted DS as 2,122 instead of 3,463 acre-feet. *Order on Reconsideration* at 2. The Director also granted “A&B’s request for hearing on the issue of the scope of junior-priority ground water rights that should be subject to administration in response to the SWC delivery call.” *Id.* at 3. The Order on Reconsideration was not issued as a final order.

On June 14, 2016, A&B submitted a letter to the Director stating “it has elected to not deliver groundwater pursuant to its enlargement water rights that are subject to the [April Forecast Supply Order]” and requesting the Director “rescind any mitigation obligation attributed to [A&B].”

On June 30, 2016, the Director issued a response to A&B’s June 14, 2016, letter stating that A&B will not have a mitigation obligation for this year if A&B curtails the enlargement ground water rights and if the priority date for curtailment for 2016 remains junior to A&B’s other ground water rights.

On July 1, 2016, A&B filed *A&B Irrigation District’s Notice of Withdrawal of Request for Hearing* withdrawing its request for hearing on the issue of the scope of junior-priority ground water rights that should be subject to administration in response to the SWC delivery call. The Department received no opposition to A&B’s request to withdraw its request for hearing. The Director issued an order granting A&B’s request on September 2, 2016.

Because the Director issued the Order on Reconsideration granting A&B’s request for hearing, the April Forecast Supply Order did not become a final order. Now that the Director has issued an order granting A&B’s request to withdraw its request for hearing, there is uncertainty as to the status of the April Forecast Supply Order. To resolve the uncertainty, the Director issues this *Order Designating April 2016 Forecast Supply Order Final as Modified* to clarify that the April Forecast Supply Order, as modified by the Order on Reconsideration that reduced A&B’s proportionate share to 2,122 acre-feet, is a final order pursuant to provisions and standards set forth in chapter 52, title 67, Idaho Code.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the April Forecast Supply Order, as modified by the Order on Reconsideration, is a final order pursuant to provisions and standards set forth in chapter 52, title 67, Idaho Code.

IT IS FURTHER ORDERED that this order does not affect or prejudice A&B’s ability to request a hearing on A&B’s proportionate share of any predicted DS established in future As-Applied orders.

Dated this 2nd day of September 2016.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September 2016, the above and foregoing, was served by the method indicated below, and addressed to the following:

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Deborah Gibson
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person 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. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.