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

COMES NOW, A&B Irrigation District (hereafter referred to as “A&B” or “District”), by and through counsel of record, and hereby petitions for reconsideration and requests a hearing on the Director’s Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3) (“April Order”) issued on April 11, 2019. The petition is filed pursuant to Idaho Code § 67-5246, Idaho Code § 42-1701A(3), and the Department’s rules of procedure (IDAPA 37.01.740.02). Further, A&B provides notice of non-use of its junior priority groundwater
rights\(^1\) subject to curtailment pursuant to the order for the 2019 irrigation season.

**BACKGROUND**

The Director issued the *April Order* implementing Steps 1 - 3 of the SWC conjunctive administration methodology on April 11, 2019. The Director predicted Twin Falls Canal Company (TFCC) would suffer an in-season material injury in the amount of 20,900 acre-feet. The Director identified A&B's “proportionate share” of the predicted injury to be “2,121 acre-feet.” *April Order* at 5, n. 4. No explanation is given in the order regarding the method and calculation of the “proportionate share.” IDWR has yet to publish any “background data” on its website concerning the apportioned shortfall between junior priority ground water rights subject to the order. The issue was addressed with IDWR without litigation and A&B reserved all rights as to its future application.

**PETITION FOR RECONSIDERATION**

A&B requests reconsideration of the Director’s calculation that A&B’s “proportionate share of the predicted DS of 20,900 acre-feet is 2,121 acre-feet.” *April Order* at 5, n.4. A&B is unclear as to the basis for the Director’s method and calculation to determine the “proportionate impact” of A&B’s ground water rights junior to August 25, 1991 as compared to other junior ground water rights.

A&B should only be responsible for the predicted injury caused by its junior priority ground water rights subject to the *April Order* on the Near Blackfoot to Minidoka reaches of the Snake River. A&B has five “enlargement” water rights affected by the *April Order* that authorize the irrigation of 2,063.1 acres (water right nos. 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B).

\(^1\)The following groundwater rights held by A&B are junior to August 25, 1991: 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B.
Consequently, A&B requests the Director to reconsider and re-calculate the “proportionate impact” based upon the predicted impact of A&B’s ground water rights junior to August 25, 1991 on the Near Blackfoot to Minidoka reaches of the Snake River.

Finally, the Director failed to consider the impacts caused by hydraulically connected junior ground water rights tributary to the Snake River but that are not within the defined “area of common ground water supply.” Rule 50. Irrespective of the rule, the Director has the duty and obligation to use the best available science in water right administration, which he acknowledges is ESPAM 2.1. See April Order at 4, n.3. ESPAM 2.1 defines the Eastern Snake Plain Aquifer differently than the CM Rules, which was promulgated over 20 years ago. See CM Rule 50.01. The rule admittedly fails to account for the best available science to the detriment of junior ground water users like A&B. By excluding certain juniors from administration the Director has artificially enlarged the mitigation obligation of A&B contrary to Idaho’s constitution and water distribution statutes. Stated another way, if all hydraulically connected juniors were being appropriately administered, A&B’s “proportionate share” of the mitigation obligation would be lower. The application of the CM Rules in such a manner is unconstitutional and should be reconsidered.

REQUEST FOR HEARING

To the extent the Director denies the above request for reconsideration to identify an accurate “proportionate share” regarding A&B’s junior priority ground water rights with respect to the predicted demand shortfall, including appropriately identifying all hydraulically connected junior ground water rights, A&B requests a hearing on the same pursuant to Idaho Code § 42-1701A(3).

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2 The Director attempted to repeal Rule 50 in a prior legislative session. Although the Legislature rejected the Director’s proposed rule change that does not excuse unconstitutional water right administration. Even the Legislature cannot override what the constitution requires.
Further, in order to avoid unnecessary delay and further litigation, A&B and its consultants are available and would be willing to participate in an informal meeting with IDWR the other parties to review and better understand the Director’s findings and methods used regarding this issue.

NOTICE OF NON-USE

In addition to the above requests, A&B provides notice of non-use of its junior ground water rights subject to the April Order for the 2019 irrigation season. As the Director may be aware, A&B has converted approximately 3,573.6 acres formerly irrigated with groundwater to surface water as supplies are available. A&B successfully delivered approximately 8,344.8 acre-feet of surface water to these acres in 2018. A&B intends to deliver surface water to these acres again in 2019, which more than accounts for the acres covered by the junior priority water rights (2,063.1) subject to the April Order. In other words, A&B will not deliver groundwater pursuant to its referenced ground water rights subject to the April Order this irrigation season. Consistent with the Director’s June 30, 2016 letter concerning this same issue, A&B presumes that the referenced water rights will be removed from the curtailment list as A&B will not deliver groundwater pursuant to these rights this irrigation season.

DATED this 23rd day of April, 2019.

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson

Attorneys for A&B Irrigation District
CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2019, I served a true and correct copy of the foregoing A&B Irrigation District's Petition for Reconsideration and Request for Hearing re: April 2019 As Applied Order / Notice of Non-Use on the following by the method indicated:

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