

**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	CM-DC-2010-001 ORDER GRANTING REQUEST FOR HEARING
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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”).¹

On April 11, 2019, the Director issued the *Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3)* (“As-Applied Order”), which applied steps 1, 2, and 3 of the Methodology Order. The Director predicted an in-season demand shortfall (“DS”) of 20,900 acre-feet. *As-Applied Order* at 3-4. The Director ordered that, by May 1, 2019, ground water users with consumptive water rights “junior to August 25, 1991, 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 20,900 acre-feet in accordance with an approved mitigation plan.”² *Id.* at 6. The Director indicated 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 20,900 acre-feet is 2,121 acre-feet.” *Id.* at 5, n.4.

¹ The SWC is comprised of A&B District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

² A&B holds the following groundwater rights that are junior to August 25, 1991: 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B. *Petition* at 2.

On April 23, 2019, A&B filed with the Department *A&B Irrigation District's Petition for Reconsideration and Request for Hearing Re: April 2019 As Applied Order* ("Petition") and combined *Notice of Non-use* ("Notice").³

THE PETITION

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." *Petition* at 2 quoting *As-Applied Order* at 5, note 4. A&B also requests a hearing regarding the Director's determination of A&B's proportionate share of the predicted DS. *Id.* at 3. A&B states that "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... to review and better understand the Director's findings and methods used regarding this issue." *Id.* at 4.

Idaho Code § 42-1701A(3) states:

Unless the right to a hearing before the director . . . is otherwise provided by statute, any person aggrieved by any 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.

A&B has not been afforded an opportunity for a hearing on these matters, and, therefore, the Director will grant A&B's request for hearing.⁴ A&B and its consultants should be allowed to meet informally with Department staff to review the findings and methods used to determine A&B's proportionate share of the predicted DS prior to hearing. Accordingly, no hearing schedule will be set at this time.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

A&B's request for hearing regarding its proportionate share of the predicted DS is GRANTED. The granting of this hearing does not stay the effectiveness of the Methodology Order or As-Applied Order. Counsel for A&B should contact counsel for the Department to coordinate informal discussions.

³ In the Petition's section titled Notice of Non-use, A&B states it "will not deliver groundwater pursuant to its referenced ground water rights subject to the [As-Applied Order] this irrigation season. Consistent with the Director's June 30, 2016 letter concerning the 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." *Petition* at 4; and *see supra*, note 2. The Director will address the issue of non-use in his forthcoming *Final Order Curtailing Water Rights Junior to August 25, 1991*.

⁴ Because the Director is granting A&B's request for hearing, A&B's request for reconsideration is moot and will not be addressed in this order.

Dated this 14th day of May 2019.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May 2016, the above and foregoing, was served by the method indicated below, and addressed to the following:

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