

**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 DENYING IGWA'S
PETITION FOR REVIEW**

BACKGROUND

On July 20, 2023, the Director issued his *Notice that Questions Concerning the Sufficiency of IGWA's Mitigation Notices are Moot* ("Notice"). The Notice concluded that questions concerning the sufficiency of IGWA's mitigation notices are moot, therefore, the Department would not respond to *IGWA's Petition for Reconsideration of Order Determining Deficiency in IGWA's Notice of Secured Water*, filed June 6, 2023, or *IGWA's Amended Notice of Mitigation*, filed June 1, 2023.

On August 3, 2023, the Department received *IGWA's Petition for Reconsideration* ("Petition"). The Petition seeks reconsideration of the Department's Notice, specifically, it asks the Department to "find that the 2009 Storage Water Mitigation Plan does not require payment of Water District 01 fees at the time of the notice of mitigation." *Petition* at 4.

ANALYSIS

The Department's Notice was not issued as a recommended, preliminary, or final order, as defined in the Department's Rules of Procedure 720, 730, or 740, IDAPA 37.01.01. Therefore, the Notice is not subject to a petition for reconsideration. The Department will treat IGWA's Petition as a petition to review an interlocutory order, in accordance with IDAPA 37.01.01.711.¹

IGWA argues that exceptions to the mootness doctrine apply to the Water District 01 fees question and asks the Director to address the Water District 01 fees now. *Petition* at 4. IGWA argues that

A ruling on a moot issue may be made when: (1) "there is the possibility of collateral legal consequences imposed on the person raising the issue;" (2) "the challenged conduct is likely to evade judicial review and thus is capable of

¹ IDAPA 37.01.01.711 states in part: "[a]ny party or person affected by an interlocutory order may petition the presiding officer to review the interlocutory order."

repetition;” and (3) “an otherwise moot issue raises concerns of substantial public interest.” *Wylie v. State, Idaho Transp. Bd.*, 151 Idaho 26, 31-32, 253 P.3d 700, 705-06 (2011); *Stephen v. Sallaz & Gatewood, Chtd.*, 150 Idaho 521, 528, 248 P.3d 1256, 1263 (2011). Here, all three exceptions are met. This petition addresses exceptions 2 and 3 as they have the most obvious application.

Id. at 2.

The Director disagrees that the issue is likely to evade judicial review in the future. IGWA argues that its “objection to the new fee payment requirement is rendered moot every time a new As-Applied Order is issued.” *Id.* at 3. This is not correct. In this season, the issue was rendered moot because a mid-season order determined that there was no longer an obligation. There is no guarantee that future mid-season orders will result in a determination that there is no longer an obligation. Thus, the issue is not likely to evade judicial review.

With regards to the substantial public interest exception, the Director declines to exercise this exception because there is no substantial interest in having the issue decided now. The subject matter is not likely to evade judicial review and a presiding officer can decline to exercise this exception where the matter will not escape judicial review. *See Freeman v. Idaho Dep't of Correction*, 138 Idaho 872, 877, 71 P.3d 471, 476 (Ct. App. 2003) (“Further, even if Freeman's allegation of constitutional violations involving inmates' meaningful court access issue were deemed to be of substantial public interest, the number of such claims that reach the courts render it unlikely that recurrences of denied meaningful court access will escape judicial review.”)

ORDER

IT IS HEREBY ORDERED that the Director DENIES *IGWA's Petition for Reconsideration*.

DATED this 23rd day of August 2023.


GARY SPACKMAN
Director

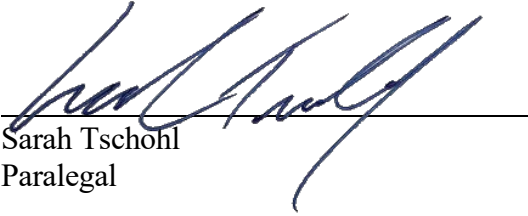
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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