

**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 CITIES'  
MOTION FOR CLARIFICATION  
AND RECONSIDERATION**

**BACKGROUND**

On June 6–9, 2023 a hearing was held on the Department’s April 21, 2023 *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Fifth Methodology Order*”). On July 19, 2023, Gary Spackman, the then-Director of the Idaho Department of Water Resources (“Department”), issued his *Post-Hearing Order Regarding Fifth Amended Methodology Order* (“*Post-Hearing Order*”) and *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Sixth Methodology Order*”). The *Sixth Methodology Order* corrects data in the Department’s *Fifth Methodology Order* found to be in error during the hearing held in this matter. The *Sixth Methodology Order*, like the *Fifth Methodology Order*, comprises nine steps to determine material injury to members of the Surface Water Coalition (“SWC”).

On August 3, 2023, the Department received the *City of Pocatello’s, City of Idaho Falls’, and Coalition of Cities’ Request for Hearing and Order Authorizing Discovery* (“*Request for Hearing and Discovery*”). The *Request for Hearing and Discovery* asks the Director to hold a status conference to schedule a four-day hearing, pursuant to Idaho Code § 42-1701(A)(3), on the *Sixth Methodology Order. Request for Hearing and Discovery* at 2. The request also asks the Director for an order authorizing discovery, pursuant to IDAPA 37.01.01.521. *Id.* at 2–3. Four issues for hearing are identified in the *Request for Hearing and Discovery*:

- a) Whether the members of the Surface Water Coalition (“SWC”) operate reasonably and without waste;
- b) Whether the irrigated acreage numbers for the SWC members in the Sixth Methodology Order are accurate;
- c) Whether the number of acres irrigated with supplemental groundwater rights within the service areas of the SWC members can be accurately determined; [and]

d) Whether the number of acres irrigated with enlargement rights within the service areas of the SWC members can be accurately determined[.]

*Id.* at 2.

On August 22, 2023, the Department received the *Surface Water Coalition's Response to Cities' Request for Hearing and Order Authorizing Discovery* (“*SWC's Response*”). The *SWC's Response* requests the Director “deny or limit the Cities’ request for hearing and an order authorizing discovery . . . .” *SWC's Response* at 7.

On August 25, 2023, Director Spackman issued an *Order Denying Request for Hearing and Motion Authorizing Discovery* (“*Order Denying Request for Hearing*”). After quoting Idaho Code § 42-1701(3), the Director concluded that “[t]he parties have previously been afforded an opportunity for hearing on the issues identified related to the Sixth Methodology Order and are not entitled to a hearing pursuant to Idaho Code § 42-1701A(3).” *Order Denying Request for Hearing* at 2.

On September 5, 2023, the City of Pocatello, the City of Idaho Falls, and Coalition of Cities (collectively “Cities”) filed a *Motion for Clarification and Reconsideration of Denial of Request for Hearing and to Engage in Discovery* (“*Motion for Clarification and Reconsideration*”). The Cities “seek clarification on the nature of the Sixth Methodology Order.” *Motion for Clarification and Reconsideration* at 2. The Cities “request clarification on the nature and status of the Sixth Methodology Order – is it, in fact, merely an ‘amended’ Fifth Methodology Order that is ripe for immediate appeal?” *Id.* at 3. The Cities also ask that the Director also “reconsider his denial of the Cities’ request to conduct discovery.” *Id.* at 4.

On September 19, 2023, the SWC submitted *Surface Water Coalition's Response to Cities' Motion for Clarification and Reconsideration* (“*SWC's Response to Motion for Clarification*”). The SWC argues the Director correctly denied the Cities’ request for hearing and request for discovery and urges the Director to deny the latest request. *SWC's Response to Motion for Clarification* at 2–4.

## ANALYSIS AND CONCLUSIONS OF LAW

### A. Motion for Clarification and Reconsideration.

Idaho Code § 42-1701A(3) states in relevant part:

Unless the right to a hearing before the director . . . is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action . . . 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.

I.C. § 42-1701A(3) (emphasis added).

The Director denies the *Cities' Motion for Clarification and Reconsideration* because there is nothing unclear about the *Order Denying Request for Hearing*. As was stated in the *Order Denying Request for Hearing*, “[t]he parties have previously been afforded an opportunity for hearing on the issues identified related to the Sixth Methodology Order and are not entitled to a hearing pursuant to Idaho Code § 42-1701A(3).” *Order Denying Request for Hearing* at 2. The *Sixth Methodology Order* is an order issued after a hearing in response to the issues raised by the parties at hearing. The Cities ask whether “the *Sixth Methodology Order* – is it, in fact, merely an ‘amended’ Fifth Methodology Order.” *Motion for Clarification and Reconsideration* at 3. The title of the order does not matter. What matters is that the Cities have previously been afforded an opportunity for a hearing on the issues. Because the parties were recently afforded a hearing on the issues, the parties are not entitled to another hearing at this time. I.C. § 42-1701A(3).

**B. Motion to Authorize Discovery.**

Because the request for an order authorizing discovery was made as part of an improper request for hearing, the Director will not consider the request for discovery.

**ORDER**

IT IS HEREBY ORDERED that the *Motion for Clarification and Reconsideration of Denial of Request for Hearing and to Engage in Discovery* is DENIED.

DATED this 25th day of September 2023.



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MATHEW WEAVER  
Director

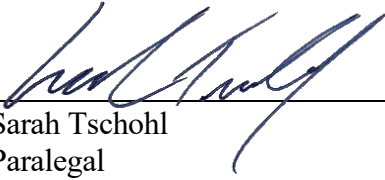
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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Sarah Tschohl  
Paralegal

# **EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION**

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

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, 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.