

**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 AMERICAN FALLS-ABERDEEN GROUND WATER DISTRICT'S MOTION TO RECONSIDER ORDER GRANTING HEARING

BACKGROUND

On July 19, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued the *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Sixth Methodology Order*”). That order establishes nine steps for determining material injury to members of the Surface Water Coalition (“SWC”).

On April 16, 2025, the Director issued the *Final Order Regarding April 2025 Forecast Supply (Methodology Steps 1–3)* (“*April Forecast Supply Order*”), finding that A&B Irrigation District (“A&B”) must mitigate for its proportionate share (384 acre-feet) of the predicted in season demand shortfall (63,000 acre-feet) to Twin Falls Canal Company (“TFCC”). *April Forecast Supply Order*, at 5 n.8

On April 29, 2025, A&B filed a request for hearing to contest the *April Forecast Supply Order* and identified the following issues for hearing:

- (1) Whether the order identified proportionate share (384 acre-feet) of the predicted injury (63,000 acre-feet) to TFCC is calculated correctly based upon A&B’s actual diversion and use of water rights that are subject to the identified curtailment date (junior to August 28, 1955).
- (2) Whether A&B should be allowed to mitigate for a portion of groundwater right 36-15127A (approximately 508.3 acres) that will be diverted [sic] used during the 2025 irrigation season, as opposed to mitigating for all 1,886.4 acres authorized by the water right.
- (3) Whether the steady-state use of the ESPAM 2.2 in identifying A&B’s proportionate share is consistent with the transient use of the model in identifying ground water rights subject to curtailment as outlined in the *Sixth Methodology Order*.
- (4) For other issues and matters that may [sic] discovered in this proceeding.

A&B Req. for Hr’g, at 1–2 (Apr. 2025).

On May 16, 2025, the Director issued the *Final Order Curtailing Ground Water Rights Junior to August 28, 1955* (“*May Curtailment Order*”), including several of A&B’s ground water rights subject to curtailment. *May Curtailment Order*, at 4, attach. A, at 1.

On July 10, 2025, the Director issued an *Order Revising April 2025 Forecast Supply and Continuing May 16, 2025 Curtailment Order (Methodology Steps 5 & 6)* (“*July As-Applied Order*”). In that order, the Director revised the predicted in-season demand shortfall, concluding that A&B’s proportionate share of the predicted injury to TFCC is 5,039 acre-feet. *July As-Applied Order*, at 11 n.6.

On July 24, 2025, A&B filed another request for hearing, this time contesting the *July As-Applied Order*, and identified substantively similar issues to the April request and added the following issue:

Whether the Director’s failure to implement the May 16, 2025 curtailment order in accordance with Idaho law has injured A&B by subjecting its senior water right 36-2080 to curtailment and/or mitigation requirements during the 2025 irrigation season.

A&B Req. for Hr’g, at 1–2 (July 2025).

On September 3, 2025, the Director issued an *Order Granting A&B Irrigation District’s Requests for Hearing, Consolidating Proceedings for Hearing, and Appointing Hearing Officer; Notice of Prehearing Conference* (“*Order Granting Hearing*”). In that order, the Director consolidated both A&B’s hearing requests and concluded that “A&B has not previously been afforded an opportunity for a hearing to contest either the *April Forecast Supply Order* or *July As-Applied Order*.” *Order Granting Hearing*, at 4. The Director also appointed former Idaho Supreme Court Chief Justice, Gerald Schroeder, as the hearing officer in this matter. *Id.* at 5.

On September 11, 2025, the Director issued the *Order Revising July 2025 Forecast Supply (Methodology Step 7-8)* (“*September Order*”), concluding that A&B satisfied its storage water delivery obligation, so it no longer needed to “establish that they can mitigate for its proportionate share of the predicted [in-season demand shortfall].” *September Order*, at 12 n.7.

On November 18, 2025, the Director received a motion from American Falls-Aberdeen Ground Water District (“AFA”) asking him to reconsider his *Order Granting Hearing*. See *American Falls-Aberdeen Ground Water District’s Motion to Reconsider Order Granting Hearing and Vacate Hearing or, Alternatively, to Clarify the Scope of Hearing; Request for Expedited Ruling; Brief in Support*, at 1–2 [hereinafter *AFA Motion*]. AFA requests that the Director reconsider the *Order Granting Hearing* and deny both of A&B’s hearing requests because A&B is barred from relitigating issues that were already subject to a prior Department hearing and that one issue is moot based on the conclusions in the *September Order*. *Id.* at 2. In the alternative, AFA asks the Director to clarify the scope of the hearing to exclude the Hearing Officer’s consideration of issues involving a ground water management area or plan. *Id.* at 3.

On November 18, 2025, Idaho Ground Water Appropriators, Inc. (“IGWA”) also filed a motion for summary judgment with Hearing Officer Schroeder that contained substantively similar arguments as the *AFA Motion* regarding *res judicata*. *Idaho Ground Water Appropriator’s, Inc.’s Mot. for Summ. J.*, at 6–7 [hereinafter *IGWA Motion*].

Pursuant to A&B’s request to extend response deadlines to both the *AFA Motion* and the *IGWA Motion*, Hearing Officer Schroeder issued an order extending the deadline for A&B to respond to both motions to December 9, 2025, and any reply briefs to December 16, 2025. *Order Granting A&B’s Motion to Amend Deadlines; Setting Deadline to Provide Staff Memo*, at 3 (Nov. 25, 2025).

On December 9, 2025, the Department received *A&B Irrigation District’s Consolidated Response to AFA Motion / IGWA Motion for Summary Judgment* (“*A&B Response*”). A&B argued that the *AFA Motion* was procedurally misplaced since there is a hearing officer assigned to this matter who has the authority to consider such a motion. *A&B Response*, at 5–6. AFA filed its reply on December 12, 2025.

ANALYSIS

I. The Director will not review the *Order Granting Hearing* because a hearing officer has already been assigned to this matter.

The *Order Granting Hearing* was not issued as a recommended, preliminary, or final order as defined in Rules 720, 730, or 740 of the Department’s Rules of Procedure (IDAPA 37.01.01). Therefore, that order is not subject to a petition for reconsideration. However, the Director will treat the *American Falls Motion* as a petition to review an interlocutory order under Rule 711. IDAPA 37.01.01.711.

AFA argues that A&B has already been afforded an opportunity for a hearing on the issues it now raises because it presented two issues at the June 2023 hearing that are substantively identical to five of the six issues for which it now seeks a hearing. *AFA Motion*, at 4. In addition, AFA argues that the remaining issue—Director’s implementation of the *May Curtailment Order*—became moot when the Director issued the *September Order* finding that A&B did not need to “mitigate for its proportionate share of the predicted [in-season demand shortfall].” *Id.* at 6 (quoting *September Order*, at 12 n.7).

Pursuant to Rule 102, the Director may appoint a hearing officer to preside over a formal proceeding. IDAPA 37.01.01.102. After receiving A&B’s hearing requests, the Director concluded that A&B has not previously had an opportunity to contest either the *April Forecast Supply Order* or the *July As-Applied Order*, and that formal proceedings are necessary because informal proceedings are unlikely to resolve A&B’s issues. *Order Granting Hearing*, at 4–5. The Director acknowledges that A&B has raised the proportionate share calculation issue in the past. *See AFA Motion*, at 4–5.

However, the Director appointed Hearing Officer Schroeder to preside over this matter and consider the issues A&B has presented. *Id.* at 5. The arguments raised by AFA are similar to

the issues raised by the *IGWA Motion*. The Director is confident that Hearing Officer Schroeder can address these issues and that it is most appropriate for these issues to be considered within the context of the administrative proceeding before the Hearing Officer. Therefore, the Director will deny the *AFA Motion* and will leave it for Hearing Officer Schroeder to consider the issues raised in the *AFA Motion* and reply.

II. The Hearing Officer, not the Director, has the authority to clarify the scope of the hearing at this stage in the proceeding.

In the alternative, AFA asks the Director to clarify that any testimony or evidence pertaining to a ground water management area or related ground water management plan is outside the scope of the hearing. *AFA Motion*, at 7.

A hearing officer is authorized to exclude evidence that is irrelevant. IDAPA 37.01.01.600. The Director is not the hearing officer on this matter. Accordingly, Hearing Officer Schroeder is the one with authority to decide whether evidence is outside the scope of the hearing. Therefore, the Director will deny this alternative motion.

ORDER

IT IS HEREBY ORDERED that *American Falls-Aberdeen Ground Water District Motion to Reconsider Order Granting Hearing and Vacate Hearing or, Alternatively, to Clarify the Scope of Hearing; Request for Expedited Ruling; Brief in Support* is DENIED.

DATED this 22nd day of December 2025.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

Travis L. Thompson PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 thompson@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Abby R. Bitzenburg PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 abitzenburg@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main Street, Suite 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Thomas J. Budge RACINE OLSON PO Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Sarah A Klahn Maximilian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com mbricker@somachlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC PO Box 107 Boise, ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email

COURTESY COPIES VIA EMAIL TO:

Craig Chandler IDWR—Eastern Region craig.chandler@idwr.idaho.gov	Corey Skinner IDWR—Southern Region corey.skinner@idwr.idaho.gov
---	---

Suzy Cooley
Paralegal