

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE MITIGATION  
PLAN FILED BY A&B IRRIGATION  
DISTRICT FOR THE DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
THE SURFACE WATER COALITION

Docket No. CM-MP-2015-003

**FINAL ORDER APPROVING  
MITIGATION PLAN**

The Director ("Director") of the Idaho Department of Water Resources ("Department") finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. On May 12, 2005, the Department received A&B Irrigation District's ("A&B") *Request for Approval of Mitigation Plan of A&B Irrigation District* filed in the Surface Water Coalition ("SWC") delivery call case. This mitigation plan was not published by the Department and no order was issued approving the plan.

2. On May 21, 2015, the Department received *A&B Irrigation District's Amended Rule 43 Mitigation Plan* ("Amended Mitigation Plan"). The Amended Mitigation Plan was submitted pursuant to Rule 43 of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"). IDAPA 37.03.11.043.

3. The Amended Mitigation Plan has four components. The first component seeks mitigation approval for conversions from ground water irrigation to surface water irrigation. A&B converted 1,378 acres from ground water to surface water supplies and A&B seeks mitigation approval for the conversions. *Amended Mitigation Plan* at 3.

4. The second component seeks mitigation approval for acres enrolled in the federal Conservation Reserve Enhancement Program ("CREP"). *Id.* A&B sought and received mitigation approval for its existing ground water to surface water conversion project and its CREP acres in the Rangen delivery call case. *See Final Order Approving Mitigation Plan*, In the Matter of the Mitigation Plan Filed by A&B Irrigation District for the Distribution of Water to Water Right Nos. 36-02552 & 36-07694 in the Name of Rangen, Inc., (April 28, 2014).

5. The third component seeks mitigation approval for a future ground water to surface water conversion project. A&B is "in the process of developing a second pumping plant

and pipeline project to deliver available surface water to lands served by senior ground water right 36-2080” and seeks mitigation approval for the future conversion project. *Id.*

6. The fourth component seeks to mitigate using A&B’s storage water in American Falls Reservoir and Palisades Reservoir, or to rent storage water through Water District 01’s Rental Pool. *Id.*

7. Notice of the Amended Mitigation Plan was published in the Idaho Mountain Express and the Mountain Home News, beginning June 3, 2015, and ending on June 10, 2015. The notice was also published in the Times News beginning on June 4, 2015, and ending on June 11, 2015. No protests were received.

### **CONCLUSIONS OF LAW**

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, provides:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. In addition, Idaho Code § 42-1805(8) authorizes the Director to “promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

3. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution. In accordance with chapter 52, title 67, Idaho Code, the Department adopted rules regarding the conjunctive management of surface and ground water effective October 7, 1994. CM Rule 0. The CM Rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against junior-priority ground water rights in an area having a common ground water supply. CM Rule 1.

4. CM Rule 42.02 states: “The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan.”

5. CM Rule 43.01 (a-d) sets forth the criteria for submission of a mitigation plan to the Director.

6. CM Rule 43.03 establishes the factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights. A factor that may be considered by the Director includes “whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right ... .”

7. In the SWC delivery call, the mitigation obligation owed by ground water users varies from year to year. Only after a curtailment order is issued can the Department determine whether A&B’s mitigation activities fully mitigate for the depletions caused by A&B’s junior-priority ground water diversions. However, the mitigation activities proposed by A&B are the type of activities that can provide replacement water at the time and place required by the senior-priority water rights. The plan should be approved but conditioned upon confirmation that A&B’s mitigation activities fully mitigate for depletions caused by A&B’s junior-priority ground water diversions in each year that a curtailment order is issued.

### **ORDER**

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

The Amended Mitigation Plan submitted by A&B is APPROVED conditioned upon confirmation that A&B’s mitigation activities fully mitigate for depletions caused by A&B’s junior-priority ground water diversions in each year that a curtailment order is issued. Upon issuance of a curtailment order in the SWC delivery call case, A&B shall submit documentation of mitigation activities to the Department for the Director to determine whether the Amended Mitigation Plan fully mitigates for A&B’s junior-priority ground water diversions.

DATED this 16<sup>th</sup> day of December, 2015.



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Gary Spackman  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of December, 2015, the above and foregoing was served on the following by the method(s) indicated below:

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Deborah Gibson  
Admin. Assistant for the Director

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

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

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), 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.