

**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-MP-2016-001

**ORDER DENYING IGWA’S REQUEST
FOR CLARIFICATION OF ORDER
DENYING IGWA’S MOTION TO
VACATE OR AMEND 2022
COMPLIANCE ORDER**

IN THE MATTER OF IGWA’S
SETTLEMENT AGREEMENT
MITIGATION PLAN

BACKGROUND

On April 24, 2023, the Director of the Idaho Department of Water Resources (“Department”) issued the *Amended Final Order Regarding Compliance with Approved Mitigation Plan (“Amended 2021 Compliance Order”)*. In the *Amended 2021 Compliance Order*, the Director found that certain members of the Idaho Ground Water Appropriators, Inc. (“IGWA”) breached the *2016 Settlement Mitigation Plan* in 2021. *Amended 2021 Compliance Order*, at 14.

On August 2, 2023, the Director issued the *Final Order Regarding IGWA’s 2022 Mitigation Plan Compliance (“2022 Compliance Order”)*. In the *2022 Compliance Order*, the Director held that certain IGWA members failed to satisfy their proportionate share of IGWA’s mitigation obligation in 2022 and were not in compliance with the *2016 Settlement Mitigation Plan*. *2022 Compliance Order*, at 1.

On April 8, 2024, IGWA filed *IGWA’s Motion to Vacate or Amend 2022 Compliance Order (“Motion to Vacate”)*. In its *Motion to Vacate*, IGWA claimed that the ground water districts had decided to adopt a new 3-year baseline calculation to measure compliance. IGWA argued that as a result of this change, the *2022 Compliance Order*, which had relied on IGWA’s 5-year baseline, is now moot. *Motion to Vacate*, at 4.

On May 2, 2024, the Director issued an *Order Denying IGWA’s Motion to Vacate or Amend 2022 Compliance Order (“Order Denying Motion to Vacate”)*. After a long recitation of all the current legal proceedings that implicate the 5-year baseline, the Director concluded that IGWA cannot “at this point in all these proceedings, unilaterally decide to change the method used for determining compliance.” *Order Denying Motion to Vacate*, at 4. The Director also denied the request because it was untimely, stating that IGWA had an opportunity to request a hearing on the *2022 Compliance Order* but failed to timely do so and that IGWA failed to raise the issue at other critical times. *Order Denying Motion to Vacate*, at 6.

On May 16, 2024, IGWA filed *IGWA's Request for Clarification of Order Denying IGWA's Motion to Vacate or Amend 2022 Compliance Order* ("Request for Clarification"). IGWA seeks three points of clarification: 1) whether "IGWA must use a five-year baseline to measure reductions in groundwater use" and if "that determination applies to the 2022 Performance Report only or if it includes subsequent performance reports"; 2) whether IGWA can "change the baseline used in future performance reports"; and 3) whether "the Director has deemed the 2016 Plan ambiguous." *Request for Clarification*, at 1–2.

ANALYSIS

The *2022 Compliance Order* found that four ground water districts breached the *2016 Settlement Mitigation Plan* in 2022. *2022 Compliance Order*, at 8. IGWA's *Motion to Vacate* asked the Director to vacate the *2022 Compliance Order*. In its *Motion to Vacate*, IGWA also discussed in detail the earlier issued *2021 Amended Compliance Order*, which is currently on appeal to the Idaho Supreme Court. IGWA's first two points of clarification ask the Director about future performance reports, not about the 2021 or 2022 performance reports relied upon in the *2021 Amended Compliance Order* and *2022 Compliance Order*.

The *Motion to Vacate* and *Order Denying Motion to Vacate* only discuss previous performance reports. They do not discuss future performance reports. The Director should only decide those issues presented. Because the Director did not decide its applicability to future performance reports, there is no need to clarify the order regarding future performance reports.

Regarding IGWA's last point of clarification, IGWA asks whether the Director "has deemed the 2016 Plan ambiguous." *Request for Clarification*, at 2. Because the Director repeatedly stated in the *2021 Amended Compliance Order* and *2022 Compliance Order* that the 2016 plan is not ambiguous, and because nothing in the *Order Denying Motion to Vacate* suggests otherwise, the Director does not interpret IGWA's question as a genuine request for clarification.

In conclusion, the Director denies IGWA's request because the issues IGWA seeks "clarification" on are not really questions that are unclear in the order but are questions outside the scope of the order.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that *IGWA's Request for Clarification of Order Denying IGWA's Motion to Vacate or Amend 2022 Compliance Order* is DENIED.

DATED this 28th day of May 2024.



MATHEW WEAVER
Director

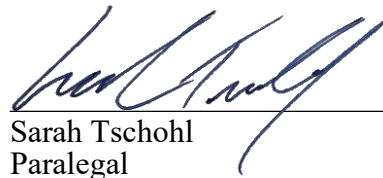
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May 2024, 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 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.