

**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-2024-003

ORDER GRANTING PETITION FOR RECONSIDERATION AND DENYING REQUEST FOR HEARING

IN THE MATTER OF THE SURFACE WATER COALITIONS' AND THE GROUND WATER DISTRICTS' 2024 STIPULATED MITIGATION PLAN

BACKGROUND

On November 19, 2024, the Surface Water Coalition (“SWC”)¹ and Districts² submitted a new long-term mitigation agreement—the *2024 Stipulated Mitigation Plan* (“*2024 Mitigation Plan*”)—to the Department as Appendix A of their *Joint Motion for Order Approving 2024 Stipulated Mitigation Plan* (“*Joint Motion*”). The *2024 Mitigation Plan* was designed to mitigate material injury to water rights held by members of the SWC, satisfy the Districts’ obligations under the ongoing SWC delivery call matter (No. CM-DC-2010-001), and replace certain other approved mitigation plans. See *Joint Motion*, at 3; *2024 Mitigation Plan*, §§ 1, 11.

On January 3, 2025, under the above caption, the Director issued a final order approving the unprotested *2024 Mitigation Plan*. However, the Director concluded that sections 4.6.1 and 4.6.3 of the *2024 Mitigation Plan* should be revised to avoid future misunderstandings. *Final Order Apprv. Stip. Mitigation Plan* ¶¶ 10–12 [hereinafter *Approval Order*]. Therefore, the Director approved the *2024 Mitigation Plan* with the following alterations:

- (a) **4.6.1 Groundwater.** Measurement and reporting of non-irrigation diversions will occur on an annual basis. The Districts will develop and implement methods to ~~read~~ measure irrigation diversions monthly. Irrigation diversions shall be ~~read~~ measured and reported from June to October, with the June ~~reading~~ reporting including diversions from the

¹ The SWC is comprised 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.

² “Districts” refers to the American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District, collectively.

start of the irrigation season. The Districts will have functioning measurement and reporting programs by the start of the 2026 irrigation season to ~~read~~ measure and report irrigation diversions monthly. The Districts' methods may include telemetry, self-reporting with photo evidence, or other reliable techniques to report water diversions. Measurements shall be ~~made available~~ reported to the appropriate watermaster and the watermaster will make the measurement data publicly available upon request.

- (b) **4.6.3 Reach Gains.** Reach gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on ~~calendar~~ water year reach gains from the ESPA as reported by the Department to the Idaho Water Resource Board.

Approval Order, at 5.

On January 17, 2025, pursuant to Idaho Code § 67-5246(4), the SWC filed for reconsideration of the *Approval Order. Pet. for Recons./Req. for Hr'g*, at 1 [hereinafter *SWC Petition*]. The SWC requests the Director reconsider his alteration of section 4.6.3 in the *Approval Order*, and offers the following as an alternative revision:

- (b) **4.6.3 Reach Gains.** Reach gains to the Near Blackfoot to Minidoka reach of the Snake River shall be measured based on calendar year reach gains from the ESPA ~~as reported by the Department to the Idaho Water Resource Board.~~

Id. at 2. The *SWC Petition* also includes a request for hearing made pursuant to Idaho Code § 42-1701A(3). *Id.* No responses to the *SWC Petition* were filed with the Department.

ANALYSIS

A. Petition for Reconsideration

Under Rule 740 of the Department's Rules of Procedure, in accordance with Idaho Code § 67-5246(4) any party may file a petition for reconsideration of a final order within fourteen days of the service date. IDAPA 37.01.01.740.02.b. The *SWC Petition* was filed fourteen days after the *Approval Order* was served. The Director finds that the *SWC Petition* is timely, and he agrees to consider the pleading.

In the *Approval Order*, the Director highlighted a discrepancy within the *2024 Mitigation Plan*—section 4.3.6 “states that reach gains ‘shall be measured based on calendar year . . . as reported by the Department . . .’; however, the Department measures and reports reach gains from the ESPA based on a water (not calendar) year schedule.” *Approval Order* ¶ 11. The Director concluded that the discrepancy should be addressed by changing “calendar year” to “water year” to (a) accurately reflect the Department's measurement and reporting practices, and (b) prevent future misunderstandings. *See id.*

However, in its petition for reconsideration, the SWC asserts that the language choice in section 4.6.3 was intentional, stating: “The parties stipulated to ‘calendar’ year reach gain measurements for purposes of future implementation of the [2024 Mitigation Plan]. All information reviewed for prior years was based upon a calendar year, not water year, metric.” *SWC Petition*, at 2. The SWC argues that striking “as reported by the Department to the Idaho Water Resource Board” from section 4.3.6 would appropriately address the Director’s concerns while still preserving the intent of the stipulating parties. *See id.* The Director finds the SWC’s argument reasonable and concludes that the proposal to strike certain language in section 4.3.6 is appropriate and will sufficiently address his concerns regarding accuracy and the prevention of misunderstandings. Consistent with the foregoing, the Director will exercise his discretion to grant the SWC’s motion for reconsideration and concurrently issue an amended final order approving the *2024 Mitigation Plan*.

B. Request for Hearing

The following is a complete reproduction of the section titled “Request for Hearing” in the *SWC Petition*:

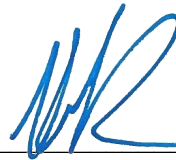
The Coalition, not having been provided a hearing on the Order, hereby requests a hearing on the above issue pursuant to I.C. § 42-1701A(3). If the Director corrects the Order on reconsideration as requested then the Coalition will withdraw its request for hearing.

SWC Petition, at 2. For reasons established in the previous section, and as ordered below, the Director has granted the SWC’s petition for reconsideration and concurrently issued an amended order, *as requested*. With the granting of the *SWC Petition* and the issuance of the *Amended Final Order Approving Stipulated Mitigation Plan* concurrently with this order, the SWC’s request for hearing is moot. As a result, denial of the SWC’s request for hearing is warranted.

ORDER

IT IS HEREBY ORDERED that the Surface Water Coalition’s January 17, 2025 *Petition for Reconsideration/Request for Hearing* is GRANTED IN PART as to the petition for reconsideration and DENIED IN PART as to the request for hearing.

Dated this 7th day of February 2025.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February 2025, the above and foregoing, was served by the method indicated below, and addressed to the following:

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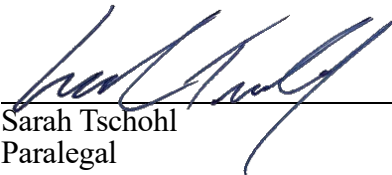
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Courtesy copies to:

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³ Through informal means and the receipt of undelivered mail, the Department has been made aware that the mailing address for counsel of McHugh Bromley, PLLC has changed from the service address the Department has on record in this matter: 380 South 4th Street, Suite 103, Boise, ID 83702. To avoid additional unnecessary expense, the Department has updated the mailing address for McHugh Bromley, PLLC in this matter. However, this update does not remove any duty that counsel of McHugh Bromley, PLLC may have to formally notify the Department and the parties of their change of mailing address for service in this matter.

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 Sarah Tschohl
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**EXPLANATORY INFORMATION TO ACCOMPANY A
FINAL ORDER**

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

The accompanying document is a "Final Order" issued by the Idaho Department of Water Resources ("Department") pursuant to Idaho Code § 67-5246.

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this 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 presiding officer 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.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless the right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition to the Director contesting this final order and requesting a hearing must be filed with the Department by any aggrieved person **within fifteen (15) days after service of this final order.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration or a request for hearing of this final order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.