



) Case No. CV-01-16-21480

**) ORDER DENYING MOTION  
) FOR RECONSIDERATION OR  
) RELIEF FROM JUDGMENT**

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## BACKGROUND

2. On April 24, 2017, McCain Foods filed a *Motion for Reconsideration or Alternatively Relief from Judgment* (“*Motion*”).

## ANALYSIS

McCain Foods first moves the Court to reconsider its *Order* under Idaho Rule of Civil Procedure 11.2(b). Since this is a judicial review proceeding it is governed by Idaho Rule of Civil Procedure 84 and the Idaho Appellate Rules. I.R.C.P. 84(r). Therefore, the Court will treat

McCain Foods' motion for reconsideration as a petition for rehearing under Idaho Appellate Rule 42 and addresses the petition without a hearing. I.A.R. 42(c).

McCain Foods requests rehearing on the grounds the Court's reading of Idaho Code § 42-1701A(3) is too narrow and the Court did not address Idaho Code § 42-1701A(4).<sup>1</sup> These arguments are largely a rehashing of arguments already made to, and considered by, the Court in the Ada County Proceedings.<sup>2</sup> In making these arguments, McCain Foods fails to acknowledge that the Court did not simply rely upon Idaho Code §§ 42-1701A(3) and (4) in reaching its decision, but also relied upon Idaho Code § 42-237e and the doctrine of exhaustion. Idaho Code § 42-237e and the doctrine of exhaustion greatly inform the Court's interpretation of Idaho Code §§ 42-1701A(3) and (4) under the circumstances present here. They also squarely address the issues raised by McCain Foods in its petition for rehearing.

The Director acted below pursuant to Idaho Code § 42-233b in issuing his *Order*. That code section is part of the Idaho Ground Water Act (I.C. §§ 42-226 to 42-239). Idaho Code § 42-237e is also part of the Idaho Ground Water Act. It governs the remedies available to a person dissatisfied with an action of the Director taken under the Act:

Any person dissatisfied with any decision, determination, order or action of the director of the department of water resources . . . pursuant to this act may, if a hearing on the matter already has been held, seek judicial review pursuant to section 42-1701A(4), Idaho Code. *If a hearing has not been held, any person aggrieved by the action of the director . . . may contest such action pursuant to section 42-1701A(3), Idaho Code.*

I.C. § 42-237e (emphasis added).<sup>3</sup> The language of the statute is clear and unambiguous. Judicial review may be sought under Idaho Code § 42-1701A(4) "if a hearing on the matter already has been held." *Id.* If not, a dissatisfied person must pursue the administrative remedies available under Idaho § 42-1701A(3). *Id.* McCain Foods does not acknowledge Idaho Code § 42-237e or this Court's prior analysis of that statute in its rehearing briefing, but it squarely

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<sup>1</sup> Contrary to McCain Foods' assertion the Court specifically addressed and analyzed all four subsections of Idaho Code § 42-1701, including subsection (4), in its *Orders Dismissing Petition for Judicial Review* issued in Ada County Case Nos. CV-01-16-23185 and CV-01-17-67. Those *Orders* were expressly incorporated by reference into the Court's *Order* dismissing McCain Foods' *Petition for Judicial Review*.

<sup>2</sup> The Term "Ada County Proceedings" refers collectively to Ada County Case Nos. CV-01-16-23185 and CV-01-17-67

<sup>3</sup> The term "act" as used in Idaho Code § 42-237e refers to the Idaho Ground Water Act, I.C. §§ 42-226 to 42-239.

addresses its concerns regarding the Court's interpretation of Idaho Code §§ 42-1701A(3) and (4).

McCain Foods also does not acknowledge the doctrine of exhaustion or this Court's prior analysis of that doctrine in its briefing. The doctrine of exhaustion dictates reasons why an administrative hearing must be held before the Director before judicial review may be sought.

The Court summarized those reasons in its *Orders* issued in the Ada County Cases:

The doctrine of exhaustion requires a case “run the *full gamut* of administrative proceedings before an application for judicial relief may be considered.” *Regan v. Kootenai County*, 140 Idaho 721, 724, 100 P.3d 615, 618 (2004) (emphasis added). Important policy considerations underlie this requirement. It protects agency autonomy by allowing the agency to develop the record and mitigate or cure errors without judicial intervention. *See e.g., Park*, 143 Idaho at 578-579, 149 P.3d at 853-854. It also defers “to the administrative process established by the Legislature.” *Id.* Consistent with these principles, “courts infer that statutory administrative remedies implemented by the Legislature are intended to be exclusive.” *Id.*

...

The policy considerations underlying the doctrine of exhaustion require that the Director be given the opportunity to address issues raised by aggrieved persons prior to this Court. As an initial matter, it is the Director and his agency that must develop the factual and evidentiary record in this matter. Both the Idaho Supreme Court and the U.S. Supreme Court have instructed that “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *See e.g., Regan*, 140 Idaho at 725, 100 P.3d at 619 (citing *Camp v. Pitts*, 411 U.S. 138, 142, 93 S.Ct. 1241, 1244, 36 L.Ed.2d 106, 111 (1973)). Since there has been no administrative hearing or proceeding before the Director at this time pertaining to his designation, there is no factual or evidentiary record for the Court to review. As a reviewing body, this Court is not in the position to create a new record on the issues . . .

Moreover, it is the Director's prerogative to designate ground water management areas. The Legislature has vested this responsibility in the Director because he has the specialized knowledge and expertise necessary to make such a designation. It follows that the Director should be given the opportunity to apply his knowledge and expertise to the issues raised by aggrieved persons prior to this Court's review of those issues. The sense of comity the judiciary has for the quasi-judicial functions of the Director requires this courtesy to allow him the first opportunity to detect and correct any errors that may pertain to his designation. *See e.g., White v. Bannock County Commissioners*, 139 Idaho 396, 401-402, 80 P.3d 332, 337-338 (2003) (one policy consideration underlying the doctrine of

exhaustion is “the sense of comity for the quasi-judicial functions of the administrative body”).

*Order Dismissing Petition for Judicial Review*, Ada County Case No. CV-01-17-67, pp. 5-6 (Feb. 16, 2017). Again, McCain Foods does not acknowledge this doctrine in its rehearing briefing, but it addresses its concerns regarding the Court’s interpretation of Idaho Code §§ 42-1701A(3) and (4).

Last, McCain Foods asserts that the facts and basis upon which the Court issued its *Orders* in the Ada County Cases have changed since those *Orders* were issued. Specifically, at the time the Court issued its *Orders* the Sun Valley Company had filed a petition and request for hearing with the Department pursuant to Idaho Code § 42-1701A(3). McCain Foods now asserts that the Sun Valley Company has withdrawn that petition and request for rehearing, and that “the Court did not [previously] decide the jurisdictional question with the understanding that no hearing request has been filed by any party.” Whether the Sun Valley’s Company’s petition is or is not withdrawn makes no difference to the jurisdictional analysis set forth by the Court in this case or in the Ada County Cases. The plain language of Idaho Code §§ 42-1701A(3), 42-1701A(4), and 42-237e, along with the doctrine of exhaustion, still govern either way. Those authorities require that any person aggrieved by the Director’s designation must timely petition and request a hearing with the Department pursuant to Idaho Code § 42-1701A(3) before judicial review may be sought. For the foregoing reasons, McCain Foods’ petition for rehearing is denied.

**B. Request for relief from judgment.**

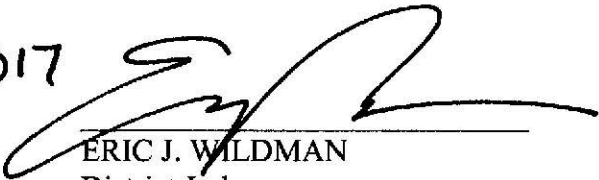
Alternatively, McCain Foods seeks relief from the *Orders* issued in the Ada County Cases under Idaho Rule of Civil Procedure 60(b). McCain Foods was a party to both of the Ada County Cases. The Court notes that it did not timely petition this Court for rehearing in the Ada County Cases, nor did it timely file an appeal in either case. Additionally, it has not filed a Rule 60(b) motion in either Ada County Case. Instead, it moves the Court in this proceeding to set aside the *Orders* issued in the Ada County Cases. The relief McCain Foods seeks in this respect is not available in this proceeding. If it wishes to seek relief from the *Orders* issued in the Ada County Cases it must raise the issue in those proceedings and serve the appropriate parties.

**III.**

**ORDER**

Therefore, for the foregoing reasons, IT IS HEREBY ORDERED that McCain Foods' *Motion* is denied.

Dated April 25, 2017



ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER DENYING MOTION FOR RECONSIDERATION OR RELIEF FROM JUDGMENT was mailed on April 25, 2017, with sufficient first-class postage to the following:

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