

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

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER DENYING PETITION
TO STAY
CURTAILMENT/GRANTING
REQUEST FOR EXPEDITED
DECISION/ GRANTING REQUEST
FOR HEARING**

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* stated the Director was initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue. *Id.* After a six day hearing, On June 28, 2021, the Director issued a *Final Order* curtailing ground water rights within the area known as the Bellevue Triangle, starting July 1, 2021 at 12:01 a.m.

Prior to the issuance of the *Final Order*, on June 24, 2021, South Valley Ground Water District (“South Valley”) and Galena Ground Water District (“Galena”) filed *South Valley Ground Water District and Galena Ground Water District’s Proposed Mitigation Plan* (“Mitigation Plan”).

After the Director issued the *Final Order*, on June 28, 2021, South Valley and Galena filed *South Valley Ground Water District’s and Galena Ground Water District’s Petition to Stay Curtailment/Request for Expedited Decision/Request for Hearing on Proposed Mitigation Plan* (“Petition”).¹

ANALYSIS

The *Petition* requests three interrelated actions of the Director: 1) Stay the curtailment called for in the *Final Order* until the Director makes a decision on the *Mitigation Plan*; 2) Hold a hearing on the *Mitigation Plan*; and 3) Expedite the decision on the *Petition*.

¹ According to the Certificate of Service, South Valley and Galena emailed the Director a copy of the *Petition* and mailed the official filing on June 28, 2021. As of the issuance of this Order, the Department has not received the mailed copy.

The first and third requests can be addressed summarily. Concurrent with this Order the Director is issuing an order denying the *Mitigation Plan*. As such, the need to stay the curtailment, called for in the *Final Order*, as requested in the *Petition*, is moot and denied. In issuing this Order the Director grants the *Petition*'s request to expedite the decision.

The request for a hearing on the *Mitigation Plan* is granted. However, the legal authority for holding a hearing needs to be clarified. In the *Petition*, South Valley and Galena argue the Director is required to hold a hearing on the *Mitigation Plan* pursuant to the Conjunctive Management Rules, IDAPA 37.03.11 ("CM Rules"). *Petition* at 3-4, 9. As discussed in the *Final Order*, this proceeding is not governed by the CM Rules. *Final Order* at 30-32. The Director will treat South Valley's and Galena's request for a hearing as a request under Idaho Code § 42-1701A(3) in regards to the Director's denial of the *Mitigation Plan* and denial of the request for stay in the *Petition*. The Department will work with the parties in this administrative proceeding to expeditiously schedule the hearing.


ORDER

Based on the forgoing discussion, IT IS HEREBY ORDERED that South Valley's and Galena's petition to stay curtailment is DENIED.

IT IS FURTHER ORDERED that South Valley's and Galena's petition for hearing is GRANTED.

IT IS FURTHER ORDERED that South Valley's and Galena's petition to expedite the Director's decision on the *Petition* is GRANTED.

DATED this 29th day of June, 2021.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29th day of June, 2021, the above and foregoing FINAL ORDER DENYING PETITION TO STAY CURTAILMENT/GRANTING REQUEST FOR EXPEDITED DECISION/ GRANTING REQUEST FOR HEARING was served by the method indicated below, and address to the following:

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Megan Jenkins
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, 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.

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: a) of 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.