

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

IN THE MATTER OF THE PETITION
FILED BY ABERDEEN-SPRINGFIELD
CANAL COMPANY REGARDING
DISTRIBUTION OF NATURAL FLOW BY
WATER DISTRICT 01

Docket No. P-WRA-2017-001

**ORDER ACCEPTING SETTLEMENT;
ORDER REQUIRING
IMPLEMENTATION**

BACKGROUND

On January 18, 2017, Aberdeen-Springfield Canal Company (“ASCC”) submitted a letter to the Idaho Department of Water Resources (“Department”) asserting the following:

River losses in the [At Blackfoot to Near Blackfoot Snake River] reach below . . . [the Shelley to At Blackfoot] reach of the river are deducted from the natural flow available to [ASCC], even though gains in the reach below us are credited to junior, downstream appropriators. In some years, this has resulted in a diminishment of our available natural flow by as much as 65,000 acre-feet in a single irrigation year.

In the letter, ASCC asks that the Director change the way Water District 01 distributes natural flow in the Shelley to At Blackfoot reach.

ASCC’s letter is a petition as defined by the Department’s Rule of Procedure 230. IDAPA 37.01.01.230. The Director of the Department (“Director”) published notice of ASCC’s petition in the Post Register, Rexburg Standard Journal, Idaho State Journal, Teton Valley News, The Jefferson Star, Times-News, The Morning News, and The Power County Press. The Director also conducted formal proceedings to address the petition in accordance with the Department’s Rule of Procedure 104. IDAPA 37.01.01.104. The Director scheduled a hearing, set a deadline for petitions to intervene, and ordered preparation of a staff memorandum.

The Department received and granted petitions to intervene filed by the Upper Valley Surface Water Entities, Idaho Power Company, the Surface Water Coalition, the Shoshone-Bannock Tribes, and the U.S. Bureau of Indian Affairs.

The Director held a hearing on September 13, 2017. At the hearing, the parties submitted to the Director a *Stipulation and Joint Motion for Order Approving Stipulation* (“Settlement”) as Exhibit 2 pursuant to the Department’s Rules of Procedure 557 and 612. IDAPA 37.01.01.557 & IDAPA 37.01.01.612.

ANALYSIS

The Department's Rule of Procedure 612 requires the presiding officer to review a settlement when it is presented to the presiding officer and authorizes the presiding officer to accept the settlement. IDAPA 37.01.01.612.

In the Settlement, the parties "stipulate and jointly move the Department for an order approving the same and including the procedures in Water District 01 water right administration and accounting beginning in the 2018 irrigation season." *Settlement* at 1-2. The parties stipulate to the "administrative and water rights accounting procedure" described in the Settlement in an attempt "to reach an equitable solution for the situation that arises in the [Below Blackfoot to Near Blackfoot] reach in certain years . . . while preserving the ability to maximize storage and not charge storage losses in other reaches of the Snake River." *Id.* at 3-5.

As the parties acknowledge, the procedure proposed in the Settlement "will necessitate a change" to the Water District 01 computerized water right accounting program. *Id.* at 5. Department staff Tony Olenichak, Water District 01 Program Manager, testified at the September 13, 2017, hearing that Water District 01 can administer the water right accounting procedure as set forth in the Settlement. Accordingly, pursuant to Rule 612 (IDAPA 37.01.01.612), the Director will accept the Settlement and order the procedure set forth in the Settlement be incorporated into Water District 01's water right administration and accounting procedures and implemented starting in the 2018 irrigation season. However, the Director will reserve the right to reconsider in the future how losses to natural flow are accounted for in Water District 01's accounting procedures.

ORDER

Based upon and consistent with the foregoing, **IT IS HEREBY ORDERED** that the Settlement is **ACCEPTED**.

IT IS FURTHER ORDERED that the procedure set forth in the Settlement shall be incorporated into Water District 01's water right administration and accounting procedures and implemented starting in the 2018 irrigation season. However, the Director reserves the right to reconsider in the future how losses to natural flow are accounted for in Water District 01's accounting procedures.

DATED this 31st day of October 2017.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2017, I served a true and correct copy of the foregoing document by U.S. mail, postage prepaid to the following:

Randall C. Budge
Racine Olson Nye Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
Rexburg, Idaho 83440
Jrigby@rex-law.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

John K. Simpson
Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
jks@idahowaters.com
tlt@idahowaters.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Monte Gray
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
mgray@sbtribes.com

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Duane Mecham
U.S. Department of the Interior
Attorney for Bureau of Indian Affairs
805 SW Broadway, Ste. 600
Portland, Oregon 97205
Duane.mecham@sol.doi.gov

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Lyle Swank
Water District 01 Watermaster
900 N. Skyline Dr., Ste. A
Idaho Falls, Idaho 83402-1718
lyle.swank@idwr.idaho.gov

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



Kimi White

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.