

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

IN THE MATTERS OF DESIGNATING THE )  
THOUSAND SPRINGS GROUND WATER )  
MANAGEMENT AREA AND THE )  
AMERICAN FALLS GROUND WATER )  
MANAGEMENT AREA )  
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**NOTICE OF HEARING**

On August 3, 2001, the Director of the Idaho Department of Water Resources (“Department”) issued separate orders establishing the American Falls Ground Water Management Area (“American Falls GWMA”) and the Thousand Springs Ground Water Management Area (“Thousand Springs GWMA”). Pursuant to Idaho Code § 42-233b, notice of the establishment of the two ground water management areas is being published for two weeks in various newspapers of general circulation in the affected areas.

The orders of designation dated August 3, 2001, each provide:

Any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Section 42-1701A(4), Idaho Code.

The final publication date for the newspaper notices of the two orders will be August 23, 2001. The fifteen (15) day period for filing a written petition to contest the actions will expire on September 7, 2001.

On August 10, 2001, the Idaho Ground Water Appropriators, Inc., Jerome Cheese Company, Milk Producers of Idaho, Inc., Unit Three Water Users Association, Aberdeen-American Falls Ground Water District, and Bingham Ground Water District (“Petitioners”), through their attorneys, Givens Pursley LLP, filed with the Department a pleading titled “Ground Water Users’ Request For Expedited Hearing” (hereinafter “Petition”). In addition to requesting an expedited hearing, the Petition asserts the following grounds for contesting the action of the Department in designating the American Falls and the Thousand Springs Ground Water Management Areas:

The Department’s Orders violate the provisions of Idaho Code §§ 67-5201 et seq. and 42-233b, and deny the Ground Water Users due process guaranteed by the United States and Idaho Constitutions. As such, the Department’s Orders violate

constitutional and statutory provisions, exceed the Department's statutory authority, are made upon unlawful procedure and are arbitrary, capricious and an abuse of discretion. Further, the Department's actions are not supported by substantial evidence.

Although Petitioners' pleading is not denominated a petition, it satisfies the substantive requirements of a petition and will be treated as such by the Department.

A petition, thus, having been filed and a hearing requested in accordance with the provisions of the Department's orders dated August 3, 2001, the Director shall set the two matters for a consolidated hearing on an expedited basis. Petitioners request that the two matters be set for hearing prior to August 17, 2001, stating:

Because: 1) of the imminent and irreparable harm to Ground Water Users that will occur if the Orders stand; 2) the Department's publicly stated intention to issue curtailment orders against the Ground Water Users or their members in furtherance of the Orders; and 3) the necessity that Ground Water Users be afforded the opportunity for timely judicial review of any ruling adverse to the Ground Water Users following the requested hearing, the Ground Water Users assert that such hearing must be held by the Department prior to August 17, 2001.

The Director determines, however, that scheduling a hearing prior to August 17, 2001, would not be consistent with the due process protections provided to all persons potentially aggrieved by the two orders.

Each order specifically provides that notice thereof shall be published for two consecutive weeks in newspapers of general circulation in the affected areas as required by Idaho Code § 42-233b. Further, the orders provide that, consistent with the provisions of Idaho Code § 42-1701A(3), any person aggrieved by the orders shall be entitled to a hearing before the Director to contest the actions taken, if requested within fifteen (15) days following published notice of the orders. Because other persons not represented by the Petitioners also may be aggrieved by the Department's orders and seek to exercise their right to participate in any hearing conducted by the Department to review the ground water management area designations, the Director concludes that scheduling a hearing prior to August 17, 2001, for the purpose of contesting the orders designating the American Falls GWMA and the Thousand Springs GWMA would not satisfy the due process protections provided to all potentially aggrieved persons under the provisions of Idaho Code § 42-233b.

Given that potentially aggrieved persons have another three to four weeks to file a petition with the Department contesting one or both of the orders, a hearing scheduled earlier than fourteen (14) days following the last date to contest the orders is unlikely to provide hearing participants with sufficient time to prepare for the hearing. Scheduling the hearing at least fourteen (14) days after the last date to file a petition contesting the orders will allow the Department an opportunity to issue an amended notice of hearing naming all parties to the

fourteen (14) days after the last date to file a petition contesting the orders will allow the Department an opportunity to issue an amended notice of hearing naming all parties to the proceeding as required by Rule 550 of the Department's Rules of Procedure, IDAPA 37.01.01550.

Now, therefore, the herein matters are set for hearing on September 24, 25, 26, and 27, 2001, starting at 9:00 a.m. in Conference Rooms A, B, and C at the offices of the Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho. This Notice of Hearing shall be served upon the attorneys for the Petitioners and upon other persons or their attorneys who may file a petition with the Department or otherwise intervene in this proceeding within the time allowed.

The hearing will be held in accordance with the provisions of Chapter 52, Title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the rules may be obtained from the Department upon request, or are available at the Department's Web site, <[www.idwr.state.id.us](http://www.idwr.state.id.us)>. In order to expedite final consideration of these matters, the presiding officer at the hearing will be Karl J. Dreher, Director of the Department of Water Resources.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the hearing, please advise the Department within five (5) days prior to the hearing. Inquiries about scheduling or hearing facilities should be directed to Lisa Hall, Administrative Assistant, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho 83706-2237, telephone (208) 327-7910, fax: (208) 327-7866.

All parties to this matter will have the opportunity to respond and present evidence and argument on all issues involved, provided that where two or more parties have substantially like interests or positions, the presiding officer may limit the number of persons who testify, examine witnesses, or make and argue motions and objections in order to expedite the proceedings and avoid duplication (see Rule of Procedure 560, IDAPA 37.01.01560).

Pursuant to Department Rule of Procedure 710, IDAPA 37.01.01710, the foregoing Notice of Hearing is an interlocutory order that does not decide substantive issues presented in the proceeding and is not subject to review by reconsideration or appeal. The issuing officer may review this interlocutory order pursuant to Rule 711, IDAPA 37.01.01711.

Petitioners requested that any determination by the Department not to conduct a hearing prior to August 17, 2001, be conveyed by a final written order subject to judicial review. The Director determines that the Department lacks authority to characterize a notice of hearing as a final order subject to judicial review and therefore declines to assent to Petitioners' request.

DATED this 12th day of August 2001.

  
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KARL J. DREHER  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of August 2001, I caused a true and correct copy of the foregoing Notice of Hearing to be sent by U.S. Mail, postage paid to the following:

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*Lisa Hall*

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