

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

IN THE MATTER OF THE AMERICAN
FALLS GROUND WATER MANAGEMENT
AREA

**FINAL ORDER RESCINDING
AMERICAN FALLS GROUND WATER
MANAGEMENT AREA**

BACKGROUND

1. On August 3, 2001, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued an order designating the American Falls Ground Water Management Area ("American Falls GWMA") pursuant to Idaho Code § 42-233b.
2. On August 29, 2003, the Director issued a *Final Order Modifying the Boundaries of the American Falls Ground Water Management Area*. The order modified the boundaries of the American Falls GWMA by reducing the designated area.
3. On October 2, 2003, the Twin Falls Canal Company and North Side Canal Company ("Canal Companies") filed a *Petition to Initiate Contested Case* ("2003 Petition") with the Department seeking administrative review of the Final Order. The Canal Companies argued the boundaries of the American Falls GWMA should not be reduced. The Canal Companies further requested a stay of the Final Order and a hearing for the issues discussed in their petition. *2003 Petition* at 8. They simultaneously filed the *Motion to Stay August 29, 2003 Order* with the 2003 Petition.
4. On November 21, 2003, the Department served the *Notice of Contested Case and Notice of Status Conference* on the parties, setting the status conference to be held on December 12, 2003.
5. Petitions to intervene in this proceeding were filed by the Idaho Ground Water Appropriators, Inc. ("IGWA"), and the Falls Irrigation District ("FID") on December 8, 2003, and December 16, 2003, respectively.
6. A status conference was held on December 12, 2003. Subsequently, the Department issued the *Order on Status Conference and Granting Petitions to Intervene* ("Order on Status Conference") on December 24, 2003. The *Order on Status Conference* stayed the contested case until April 1, 2004, and extended the deadline to file petitions to intervene to April 1, 2004. Additionally, the petitions to intervene filed by IGWA and FID were granted and

a second status conference was set for April 5, 2004. From the Director's review of the file in this matter, it does not appear that the second status conference was held.

7. On August 15, 2013, the Canal Companies filed a *Petition to Schedule Hearing in Contested Case* ("2013 Petition") requesting the Department resume action and set a hearing date for this matter. Also filed on the same day was a petition to intervene and memorandum in support by A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District and Minidoka Irrigation District.

8. A status conference was held on December 5, 2013. Participants agreed to a schedule for filing and responding to petitions to intervene and for submission of a statement of issues by each of the parties. On December 27, 2013, the Department issued a *Scheduling Order* which formalized the deadlines for filing petitions to intervene, responses to the petitions to intervene, and statements of procedural issues in the matter.

9. In response to the agreed upon schedule during the status conference, *Petitions to Intervene* were filed by the Aberdeen-Springfield Canal Company, the City of Pocatello, and the Idaho Dairymen's Association.

10. On January 14, 2014, prior to the Director acting on the petitions to intervene, a *Joint Petition for Stay* was filed with the Department by all the parties and potential intervenors in this matter, requesting the stay of the contested case until a motion to resume proceedings is filed by any of the petitioners.

11. On January 17, 2014, the Director issued an *Order Granting Joint Petition for Stay*. The matter has remained stayed since that date.

12. Contemporaneous with this order, the Director is issuing an *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* ("Eastern Snake Plain Aquifer GWMA"). The American Falls GWMA is almost completely contained within the Eastern Snake Plain Aquifer GWMA and does not have an existing ground water management plan. Because the American Falls GWMA is almost completely contained within the Eastern Snake Plain Aquifer GWMA and does not have an existing ground water management plan, the Director will rescind the American Falls GWMA. Because the creation of the Eastern Snake Plain Aquifer GWMA addresses the concerns raised by the Canal Companies' *2003 Petition*, the Director considers the petition moot.

13. That portion of the American Falls GWMA currently within the ESPAM 2.1 boundary will be included in the Eastern Snake Plain Aquifer GWMA.¹

¹ With the rescinding of the American Falls GWMA and the simultaneous creation of the Eastern Snake Plain Aquifer GWMA, a small portion of the lands currently within the American Falls GWMA will no longer be covered by any GWMA. However, the Department's records indicate there only one ground water right (a domestic water right) with a point of diversion within the lands no longer covered.

ORDER

IT IS HEREBY ORDERED that the American Falls GWMA is rescinded.

DATED this 2nd day of November 2016.


GARY SPACKMAN
Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

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

(Required by Rule of Procedure 740.02)

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

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

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 of: a) 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.