

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
TO LEASE WATER FOR
HYDROELECTRIC GENERATION IN
THE NAME OF THE CITY OF
POCATELLO

**ORDER DENYING PETITION
FOR RECONSIDERATION**

On July 10, 2009, the City of Pocatello (“City”) filed *City of Pocatello’s Petition for Reconsideration* of the June 29, 2009 Final Order (“Order”) issued by the Director of the Idaho Department of Water Resources (“IDWR” or “Department”).¹ The Order denied the City’s Application for a Lease of Water for Hydroelectric Generation filed under I.C. §§ 42-108A and -108B.

The City asserts in its petition for reconsideration that IDWR’s denial of its lease application is inconsistent with the intentions of the legislature in adopting I.C. §§ 42-108A and -108B; that the denial is effectively based on administrative rules of the Committee of Nine adopted pursuant to inapplicable water banking statutes (I.C. § 42-1761 *et. seq.*); and that the Director should decline to consider the evidence of injury provided by the protestants because no protestant had standing under the standard provided in I.C. § 42-108B.

The Director has considered the City’s arguments. The Director is satisfied that the Order properly construed the provisions of I.C. §§ 42-108A and -108B when read in conjunction with other related statutes, including I.C. §§ 42-1761 *et. seq.* which provide for the establishment and operation of the state water supply bank. The Director is also satisfied that the protestants had standing under I.C. § 42-108B and that the storage water rights of the protestants and other

¹ On June 30, 2009, former IDWR Director David R. Tuthill, Jr. retired. Gary Spackman was appointed Interim Director of IDWR by Governor Otter on July 17, 2009.

spaceholders in the Upper Snake River storage system would be subject to uncompensated injury should the City's Application be approved as requested under the provisions of sections 42-108A and 42-108B. Finally, the Order does not apply the Water District 1 Rental Pool Procedures to the City's Application, but rather states that "without the safeguards provided under the Water District 1 Rental Pool Procedures" approval of the Application would cause injury to other spaceholders.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the City of Pocatello's Petition for Reconsideration is DENIED.

Dated this 31st day of July, 2009.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2009, the above and foregoing, was served by the method indicated below, and addressed to the following:

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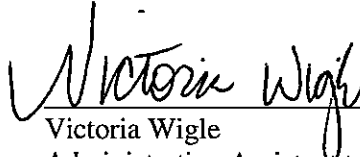
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Victoria Wigle
Administrative Assistant to the Director

EXPLANATORY INFORMATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5243, Idaho Code.

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 date of issuance (not service) of the final order, b) the date of issuance 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.