

COPY

C. Thomas Arkoosh, ISB #2253
CAPITOL LAW GROUP, PLLC
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873

*Attorneys for American Falls Reservoir
District #2*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for Minidoka Irrigation
District*

RECEIVED

SEP 15 2008

DEPARTMENT OF
WATER RESOURCES

John A. Rosholt, ISB #1037
John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner
Irrigation District, North Side
Canal Company, Twin Falls
Canal Company*

FILED *11:30*
SEP 11 2008
[Signature]
Clerk of the District Court
Gooding Cou., Idaho

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

**A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION
DISTRICT, MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY and TWIN FALLS CANAL
COMPANY,**

Petitioners,

vs.

**DAVID K. TUTHILL, JR., in his capacity as
Director of the Idaho Department of Water
Resources, and THE IDAHO DEPARTMENT
OF WATER RESOURCES,**

)
) **CASE NO. CV 2008-000551**
)
)
) **Fee Category R.2 - \$88.00**
)
)
) **SURFACE WATER COALITION'S**
) **NOTICE OF APPEAL AND**
) **PETITION FOR JUDICIAL**
) **REVIEW OF AGENCY ACTION**
)
)
)
)
)

Respondents.

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

COMES NOW, Petitioners, A&B Irrigation District (“A&B”), American Falls Reservoir District #2 (“AFRD#2”), Burley Irrigation District (“BID”), Milner Irrigation District (“Milner”), Minidoka Irrigation District (“MID”), North Side Canal Company (“NSCC”), and Twin Falls Canal Company (“TFCC”) (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their undersigned counsel, and hereby files this Petition seeking judicial review of a final agency action. A Statement of Issues which the Coalition intends to assert in this matter will be filed with the Court within 14-days.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of a final order issued by the Director of the Idaho Department of Water Resources, David K. Tuthill, Jr., on September 5, 2008 (“*Final Order*”).
2. A hearing before the agency was held in the matter from January 16, 2008 to February 5, 2008.
3. A Statement of Issues which the Coalition intends to assert in this matter will be filed with the Court within 14-days. Pursuant to I.R.C.P. 84(d)(5), the Coalition reserves the

right to assert additional issues and/or clarify or further specify the issues for judicial review stated in this petition or which become later discovered.

JURISDICTION AND VENUE

4. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.
5. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272.
6. Venue lies in this Court pursuant to Idaho Code § 67-5272. Petitioners, AFRD#2 and NSCC do business in Gooding County, Idaho and certain water rights, which are the subject of the agency action, are delivered to water users located in Gooding County
7. The Director's September 5, 2008, *Final Order Regarding the Surface Water Coalition Delivery Call* is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

8. Petitioner, A&B Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
9. Petitioner, AFRD#2 is duly organized under the laws of the State of Idaho and does business in Gooding County, Idaho.
10. Petitioner, Burley Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
11. Petitioner, Milner Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
12. Petitioner, Minidoka Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

13. Petitioner, NSCC is a non-profit Idaho corporation organized under the laws of the State of Idaho and does business in Gooding County.

14. Petitioner, TFCC is a non-profit Idaho corporation organized under the laws of the State of Idaho.

15. Respondent, Idaho Department of Water Resources is a state agency, with its main office located at 322 E. Front St., Boise, Idaho. Respondent, David K. Tuhill, Jr., is the director of the Idaho Department of Water Resources.

AGENCY RECORD

16. Judicial review is sought of the Director's September 5, 2008 *Final Order Regarding the Surface Water Coalition Delivery Call*.

17. The Department held a hearing in this matter from January 16, 2008 to February 5, 2008, which was recorded and a transcript created, which transcript should be made a part of the agency record in this matter. The person who may have a copy of such transcript is Victoria Wigle, Director's Administrative Assistant, Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803, Facsimile: (208) 287-6700, email: victoria.wigle@idwr.idaho.gov.

18. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

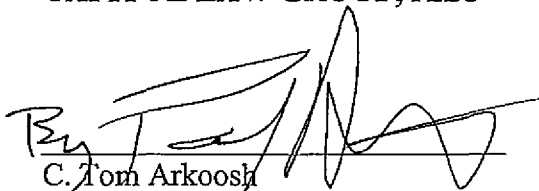
19. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

>

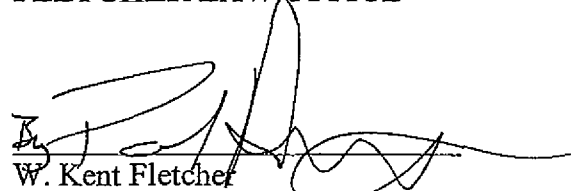
>

DATED this 11 day of September, 2008.

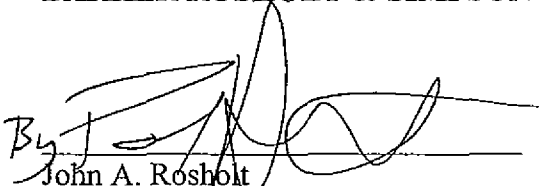
CAPITOL LAW GROUP, PLLC

By 
C. Tom Arkoosh
*Attorneys for American Falls Reservoir
District #2*

FLETCHER LAW OFFICE

By 
W. Kent Fletcher
*Attorneys for Minidoka Irrigation
District*

BARKER ROSHOLT & SIMPSON LLP

By 
John A. Rosholt
John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner
Irrigation District, North Side
Canal Company, Twin Falls
Canal Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of September, 2008, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Agency Action* upon the following by the method indicated:

Deputy Clerk
Gooding County District Court
624 Main St.
P.O. Box 27
Gooding, Idaho 83330

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Clive J. Strong
Phillip J. Rassier
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
clive.strong@ag.idaho.gov
phil.rassier@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Michael Gilmore
Attorney General's Office
P.O. Box 83720
Boise, Idaho 83720-0010
Mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Randy Budge
Candice McHugh
RACINE OLSON NYE BUDGE & BAILEY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Sarah Klahn
William A. Hillhouse II
Kelly Snodgrass
WHITE & JANKOWSKI, LLP
511 16th St., Suite 500
Denver, CO 80202
sarahk@white-jankowski.com
billh@white-jankowski.com
kellys@white-jankowski.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83205
dtranmer@pocatello.us

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Kathleen Carr
U.S. Dept. of Interior
P.O. Box 4169
Boise, Idaho 83706

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Matt Howard
U.S. Bureau of Reclamation
1150 N. Curtis Road
Boise, Idaho 83706-1234
mhoward@pn.usbr.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Lyle Swank
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, Idaho 83402-6105
Lyle.swank@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Allen Merritt
Cindy Yenter
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301
Allen.merritt@idwr.idaho.gov
Cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Josephine Beeman
BEEMAN & ASSOCIATES
409 W. Jefferson
Boise, Idaho 83702
Jo.beeman@beemanlaw.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Terry Uhling
J.R. SIMPLOT COMPANY
999 Main Street
Boise, Idaho 83702
tuhling@sipmlot.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

James Tucker
IDAHO POWER COMPANY
1221 W. Idaho St.
Boise, Idaho 83702
jamestucker@idahopower.com

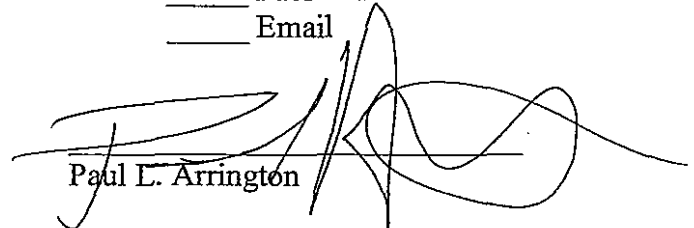
U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

James Lochhead
Adam Devoe
BROWNSTEIN HYATT FARBER SCHREK, LLP
410 17th St. 22nd Floor
Denver, Colorado 80202
jlochhead@bhfs.com
adevoe@bhfs.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Michael Creamer
GIVENS PURSLEY
601 W. Bannock
P.O. Box 2720
Boise, Idaho 83701-2720
mcc@givenspursley.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email


Paul L. Arrington