

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

<b><sup>1</sup>IDAHO GROUND WATER APPROPRIATORS, INC.,</b>	)	
	)	
<b>Petitioners,</b>	)	
<b>vs.</b>	)	<b>Case No.: CV-2010-382</b>
	)	
<b>CITY OF POCATELLO,</b>	)	<b>(consolidated Gooding County</b>
	)	<b>Cases CV-2010-382, CV-2010-383,</b>
<b>Petitioner,</b>	)	<b>CV-2010-384, CV-2010-387, CV-</b>
<b>vs.</b>	)	<b>2010-388, and Twin Falls County</b>
	)	<b>Case CV-2010-3403)</b>
<b>TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, A&amp;B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, and MINIDOKA IRRIGATION DISTRICT,</b>	)	<b>ORDER DENYING MOTION TO RENUMBER</b>
	)	
<b>Petitioners,</b>	)	<b>ORDER CONSOLIDATING PROCEEDINGS INVOLVING PETITIONS FOR JUDICIAL REVIEW OF "METHODOLOGY ORDER" AND "AS-APPLIED ORDER"</b>
<b>vs.</b>	)	
	)	
<b>GARY SPACKMAN, in his capacity as Interim Director of the Idaho Department of Water Resources, and THE DEPARTMENT OF WATER RESOURCES,</b>	)	
	)	
<b>Respondents.</b>	)	

<sup>1</sup> This caption is modified from the caption under which the various *Petitions* were filed in order to accurately reflect the arrangement of the parties. See I.R.C.P. 84(a).

\_\_\_\_\_ )  
 )  
**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** )

**I.**

**FACTS AND PROCEDURAL BACKGROUND**

1. On June 23, 2010, the Director of the Idaho Department of Water Resources issued his *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Methodology Order*”) in IDWR Docket No. CM-DC-2010-001. The following *Petitions for Judicial Review* were filed in Gooding County seeking review of the *Methodology Order* on or about July 21, 2010: (1) Idaho Ground Water Appropriators, Inc.’s *Petition for Judicial Review* in Gooding County Case CV-2010-383; (2) The Surface Water Coalition’s *Petition for Judicial Review* in Gooding County Case No. CV 2010-384; and (3) The City of Pocatello’s *Petition for Judicial Review* in Gooding County Case CV-2010-388.<sup>2</sup>

2. On June 24, 2010, the Director issued his *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4); Order on Reconsideration* (“*As-Applied Order*”) in IDWR Docket No. CM-DC-2010-001. The following *Petitions for Judicial Review* were filed in Gooding or Twin Falls County seeking review of the *As-Applied Order* on or about July 21, 2010: (1) Idaho Ground Water Appropriators, Inc.’s *Petition*

<sup>2</sup> Although all *Petitions* sought review of the same *Methodology Order*, each was assigned a separate case number by the Gooding County Clerk.

for *Judicial Review* in Gooding County Case CV-2010-382; (2) The Surface Water Coalition's *Petition for Judicial Review* in Twin Falls County Case CV-2010-3403; and (3) The City of Pocatello's *Petition for Judicial Review* in Gooding County Case CV-2010-387.<sup>3</sup>

3. On July 21, 2010, Idaho Ground Water Appropriators, Inc. and the City of Pocatello jointly filed a *Motion for Consolidation*, requesting that their respective *Petitions for Judicial Review* of the *Methodology Order* and the *As-Applied Order* be consolidated into a single proceeding. Specifically, the *Motion* requested that their *Petitions for Judicial Review* of the *Methodology Order* and the *As-Applied Order* be consolidated into pre-existing Gooding County Case CV-2008-551.<sup>4</sup> Oral argument was not requested on the *Motion*.

4. The Clerk of the Gooding County District Court subsequently filed *Notices of Reassignment* in the above-mentioned cases assigning them to this Court for disposition and further proceedings.

5. On July 23, 2010, Idaho Ground Water Appropriators, Inc. and the City of Pocatello filed a joint *Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551*, wherein they moved this Court to renumber and file the cases involving petitions for judicial review of the *Methodology Order* in Gooding County Case No. CV-2008-551. Oral argument was not requested on the *Motion*.

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<sup>3</sup> The Gooding County Clerk also assigned separate case numbers for all *Petitions* seeking review of the *As-Applied Order*.

<sup>4</sup> The Honorable John M. Melanson issued an *Order on Petition for Judicial Review* in Gooding County Case CV-2008-551 on July 24, 2009. The *Order* remanded in part to the Director for the purpose of adopting a methodology for predicting material injury to reasonable in-season demand and reasonable carryover. *Petitions for Rehearing* were filed and granted. In the interim, Judge Melanson was appointed to the Idaho Court of Appeals but retained the case on a pro tem basis for the purpose of ruling on the *Petitions for Rehearing*. Judge Melanson stayed the issuance of a decision on the *Petitions for Rehearing* pending the issuance of the Director's order on the action taken on remand and the expiration of the time periods for filing a motion for reconsideration and petition for judicial review of the new order. Thereafter, the Director issued the *Methodology Order* and the *As-Applied Order*.

6. On July 28, 2010, the Surface Water Coalition filed its *Joint Response to IGWA and Pocatello's Motion for Stay and Consolidation and Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551*, wherein the Coalition agreed with Idaho Ground Water Appropriators, Inc. and the City of Pocatello that the various *Petitions for Judicial Review* filed by the parties seeking judicial review of the *Methodology Order* and the *As-Applied Order* should be consolidated into one proceeding. The Coalition did not agree however with Idaho Ground Water Appropriators, Inc.'s and the City of Pocatello's assertion that the *Petitions* should be consolidated into pre-existing Gooding County Case CV-2008-551. Rather the Coalition contends that the *Petitions* should be consolidated into a single proceeding before the SRBA District Court pursuant to the Idaho Supreme Court's *Administrative Order* dated December 9, 2009 which declares that all petitions for judicial review made pursuant to Idaho Code § 42-1701A of any decision from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court.

## II.

### ANALYSIS

#### A. Motion to Renumber Appeals.

This Court finds Gooding County Case CV-2008-551 and the *Petitions* filed in Gooding County Cases CV-2010-383, CV 2010-384 and CV-2010-388 to be separate and distinct actions under Idaho Rule of Civil Procedure 84. The *Petitions for Judicial Review* filed in Gooding County Case CV-2008-551 sought judicial review of a final agency action (i.e., the Director's September 5, 2008 *Final Order Regarding the Surface Water Coalition Delivery Call*) separate and distinct from the final agency action from which judicial review is sought in Gooding County Cases CV-2010-383, CV 2010-384 and CV-2010-388 (i.e., the Director's *Methodology Order*). As a result, the Clerk of the District Court did not error in assigning new case numbers to the *Petitions* in Gooding County Cases CV-2010-383, CV 2010-384 and CV-2010-388 upon filing.

Moreover, Idaho Supreme Court Administrative Order dated December 9, 2009, which became effective the 1<sup>st</sup> day of July, 2010, declares that all petitions for judicial review made pursuant to Idaho Code § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court. Likewise, on July 1, 2010, this Court issued an *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order Dated December 9, 2009*, providing that upon filing of a petition for judicial review from any decision of the Department of Water Resources, the clerk of the district court where the action is filed shall forthwith issue, file, and concurrently serve upon the parties a *Notice of Reassignment*, assigning the matter to the presiding judge of the Snake River Basin Adjudication District Court for disposition and further proceeding. Pursuant to the plain language of the Idaho Supreme Court's December 9, 2009 *Administrative Order* and this Court's subsequent July 1, 2010 *Administrative Order*, the Clerk of the District Court correctly entered a *Notice of Reassignment* assigning the *Petitions* in Gooding County Cases CV-2010-383, CV 2010-384 and CV-2010-388 to this Court. As a result, Idaho Ground Water Appropriators, Inc.'s and the City of Pocatello's joint request to renumber the *Petitions* seeking judicial review of the *Methodology Order* into Gooding County Case CV-2008-551 is denied

**B. Motion to Consolidate.**

A court's decision whether to grant or deny a request for consolidation is a discretionary one. *Branom v. Smith Frozen Foods of Idaho, Inc.*, 83 Idaho 502, 508, 365 P.2d 958, 961 (1961). The Idaho Supreme Court has directed that "whenever the court is of the opinion that it may expedite its business and further the interests of the litigants, at the same time minimizing the expense upon the public and the litigants alike, the order of consolidation should be made." *Id.*

In this case, the parties are in agreement that the *Petitions for Judicial Review* filed by the parties seeking judicial review of the *Methodology Order* and the *As-Applied Order* should be consolidated into one proceeding. This Court finds that these *Petitions* involve similar issues, and that consolidation of these *Petitions* will expedite resolution of

this matter. However, pursuant to the Idaho Supreme Court's December 9, 2009 *Administrative Order* and this Court's subsequent July 1, 2010 *Administrative Order*, and for the reasons set forth above concerning the *Motion to Renumber Appeals*, the *Petitions* will be consolidated in a single proceeding before the SRBA District Court rather than in Gooding County Case CV-2008-551.

**III.**  
**ORDER**

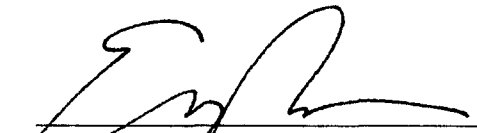
THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. Idaho Ground Water Appropriators, Inc.'s and the City of Pocatello's *Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551* is **denied**.

2. The *Petitions for Judicial Review* filed by the Idaho Ground Water Appropriators, Inc., the Surface Water Coalition and the City of Pocatello respectively, seeking judicial review of the Director's *Methodology Order* and *As-Applied Order*, shall be consolidated into Gooding County Case No. CV-2010-382.

Dated

July 29, 2010

  
ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that true and correct copies of the **ORDER CONSOLIDATING PROCEEDINGS INVOLVING PETITIONS FOR JUDICIAL REVIEW OF "METHODOLOGY ORDER" AND "AS-APPLIED ORDER"** were mailed on July 29, 2010, by first-class mail to the following:

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

Idaho Ground Water Appropriators, Inc.  
Represented by:  
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201 E Center  
PO Box 1391  
Pocatello, ID 83204-1391

Idaho Ground Water Appropriators, Inc.  
Represented by:  
Candice M. McHugh  
101 S Capitol Blvd. Ste. 208  
Boise, ID 83702

A& B Irrigation District  
Burley Irrigation District  
Milner Irrigation District  
North Side Canal Company  
Twin Falls Canal Company  
Represented by:  
Travis L. Thompson  
Paul L. Arrington  
113 Main Ave W, Ste 303  
PO Box 485  
Twin Falls, ID 83303-0485

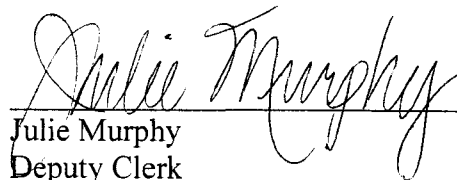
American Falls Reservoir District #2  
C. Thomas Arkoosh  
301 Main St.  
PO Box 32  
Gooding, ID 83330

Minidoka Irrigation District  
Represented by:  
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1200 Overland Ave.  
PO Box 248  
Burley, ID 83318

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Interim Director, IDWR  
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Deputy Attorney Generals  
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City of Pocatello  
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PO Box 4169  
Pocatello, ID 83201

City of Pocatello  
Represented by:  
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Denver, CO 80202

  
Julie Murphy  
Deputy Clerk