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DISTRICT COURT
GOODING CO. IDAHO
FILED

2010 JUL 21 PM 3:30

GOODING COUNTY CLERK

BY:  DEPUTY

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

UNITED STATES OF AMERICA,
BUREAU OF RECLAMATION,

Petitioners,

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,

Cross-Petitioner,

vs.

GARY SPACKMAN, in his capacity as Interim
Director of the Idaho Department of Water
Resources,¹ and THE IDAHO DEPARTMENT
OF WATER RESOURCES

Respondents,

CW-2010-0000383

Case No.: ~~CV-2008-0000551~~

IGWA'S PETITION FOR JUDICIAL
REVIEW

(Second Amended Final Order Re:
Methodology dated June 23, 2010)

Fee Category L. \$88.00

¹ Director David R. Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman is currently serving as Interim Director. I.R.C.P. 25 (d) and (e).

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

Idaho Ground Water Appropriators, Inc., acting for and on behalf of their member water users (“IGWA”), by and through their undersigned counsel, hereby petition for judicial review of the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“Final Methodology Order”) issued on June 23, 2010, by the Director of the Idaho Department of Water Resources (“Department”). *IGWA’s Petition for Judicial Review* (“Petition”) is submitted pursuant to Idaho Code §§ 67-5270 and 42-1701A(4), Rule 11(e) of the Idaho Appellate Rules, and Rule 84 of the Idaho Rules of Civil Procedure.

STATEMENT OF THE CASE

1. This Petition requests judicial review of actions taken by the Department.
2. This Petition is taken to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding, as part of Case No. 2008-000551 currently pending before the Court. Venue is proper pursuant to Idaho Code § 67-5272 on its continuing jurisdiction in Case No. 2008-551.
3. This Petition seeks judicial review of the *Final Methodology Order* issued on June 23, 2010, by the Director, in *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. The *Final Methodology Order* is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

4. The *Final Methodology Order* was issued pursuant to the *Order Staying Decision for Rehearing Pending Issuance of Revised Final Order* issued March 4, 2010 in this case. In that Order the Court ordered that it would hold in abeyance the pending petitions for rehearing in Case No. 2008-000551 until “the time periods for filing a motion for reconsideration and petition for judicial review of [the Final Methodology Order] have expired.” *Id.* at 3.

5. The Director held a remand hearing May 24-25, 2010, limited to “information that would contest or rebut the 2008 data” that the Director used in the *Final Methodology Order*.

6. This Court has jurisdiction over this action pursuant to its continuing jurisdiction over the appeal in Case No. 2008-551 and pursuant to Idaho Code §§42-1701A(4), 67-5272 and 42-1401D.

7. IGWA has exhausted all administrative remedies prior to filing this Petition.

8. IGWA is an Idaho nonprofit corporation whose members include American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, municipalities, commercial and industrial entities within the State of Idaho who depend upon ground water from the Eastern Snake Plain Aquifer for irrigation, municipal, commercial, industrial, and other authorized beneficial water uses.

9. The Department is a state agency, with its main office located at 322 E. Front Street, Boise, Idaho. Respondent Gary Spackman is the Interim Director of the Department. The Idaho Attorney General's Office is the Department's attorney.

10. The Court has in its possession a copy of the agency record submitted in conjunction with the original petitions for judicial review in Case No. 2008-551. The transcript and exhibits from the Department's remand hearing held May 24-25, 2010, should be made a part of the agency record in this matter. All pleadings and other filings with Department between the date of March 4, 2010, and this Petition should also be included as well as all documents and information required by Idaho Code §67-5249. The person who may have a copy of such transcript and agency record is Victoria Wigle, the Director's Administrative Assistant, Idaho Department of Water Resources, 322 E. Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208)287-4803, Facsimile: (208) 287-6700, email: victoria.wigle@idwr.idaho.gov.


11. IGWA anticipates that an agreement can be reached among all parties regarding the transcript and agency record and will pay its necessary share of the fee for preparation of the record at such time.

12. Service of this Petition has been made on the Department and other parties at the time of the filing of this Petition with the Court.

13. Pursuant to I.R.C.P. 84(d)(5) IGWA will submit the list of issues for judicial review within 14 days of this filing.

DATED this 20th day of July, 2010

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.

By 

RANDALL C. BUDGE
CANDICE M. MCHUGH
THOMAS J. BUDGE

Attorneys for IGWA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2010, the above and foregoing document was served in the following manner.

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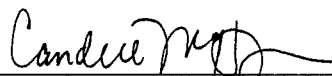
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