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*Attorneys for Idaho Ground Water Appropriators, Inc.  
(IGWA)*

**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,<sup>1</sup> and THE IDAHO  
DEPARTMENT OF WATER RESOURCES

Respondents,

Case No.: 2008-000551

**IDAHO GROUND WATER  
APPROPRIATORS, INC.'S SECOND  
AMENDED NOTICE OF APPEAL**

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<sup>1</sup> Director David R. Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman was appointed as Interim Director. I.R.C.P. 25 (d) and (e).

vs.

IDAHO GROUND WATER  
APPROPRIATORS, INC.,

Appellant-Respondents,

vs.

THE CITY OF POCA TELLO,

Appellant-Respondents,<sup>2</sup>

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

TO: THE ABOVE-NAMED RESPONDENTS, 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, IDAHO DAIRYMEN'S ASSOCIATION, INC., GARY SPACKMAN, IN HIS CAPACITY AS INTERIM DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE IDAHO DEPARTMENT OF WATER RESOURCES, CITY OF POCA TELLO, AND THE PARTIES' ATTORNEYS AS IDENTIFIED ON THE CERTIFICATE OF SERVICE BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

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<sup>2</sup> In accordance with I.A.R. 17(m) this amended notice of appeal is filed and submitted in underline and strikethrough format.

1. On October 20, 2010, the above named Appellant, IDAHO GROUND WATER APPROPRIATORS, INC. (“IGWA” or “Ground Water Users”) for and on behalf of its members, filed a notice of appeal in Case No. 2008-000551, appealing against the above named respondents to the Idaho Supreme Court from the District Court’s final *Amended Order on Petitions for Rehearing, Order Denying Surface Water Coalition’s Motion for Clarification* (“Final Order”), entered in the above entitled action on September 9, 2010, the Honorable John M. Melanson presiding. On November 30, 2010, the District Court entered a *Judgment Nunc Pro Tunc* and an *Order Amending Caption* in this matter. The *Judgment Nunc Pro Tunc* enters a final judgment pursuant to I.R.C.P. 54(b) in Case No. 2008-000551 “upon which execution may issue and appeal may be taken as provided by the Idaho Appellate Rules.” *The Court’s Order Amending Caption found that “IGWA and Pocatello are real parties in interest to this matter, participated in the proceedings on judicial review and rehearing, and have water right interests that could be affected by the outcome of this matter.”*

2. The above named Appellant, IGWA, hereby files this Amended Notice of Appeal to appeal against the above named respondents to the Idaho Supreme Court from the District Court’s *Judgment Nunc Pro Tunc*, entered on November 30, 2010, the Honorable John M. Melanson presiding. The *Judgment Nunc Pro Tunc* incorporates the Court’s Order on Petition for Judicial Review entered July 24, 2009, and the Court’s Amended Order on Petitions for Rehearing entered August 23, 2010.

3. The Appellant has a right to appeal to the Idaho Supreme Court, and the *Judgment Nunc Pro Tunc* is appealable pursuant to Rule 11(f) of the Idaho Appellate Rules.

4. The Appellant intends to assert the following preliminary issues on appeal, provided this list of issues shall not prevent the appellant from asserting other issues on appeal:

- a. Whether the District Court erred in holding that –the Director abused his discretion in determining that Twin Falls Canal Company full supply of water should be based upon 5/8 inch per acre for purpose of calculating any mitigation requirement of ground water users ~~in~~–the under the Conjunctive Management Rules.
- b. Whether the District Court erred in rejecting the Director’s determination that any reasonable carry-over obligation should be provided in the season in which the water can be put to beneficial use, not the season before.
- c. Whether the District Court erred in holding that the Director exceeded his authority by refusing to curtail junior ground water users to provide for more than one year of reasonable carry-over storage.
- d. Whether the Court erred in incorporating the *Memorandum Decision and Order on Petition for Judicial Review* issued by Judge Wildman in Minidoka County Case No. CV 2009-647 on May 4, 2010.
- e. Whether the District Court erred in holding that a senior is entitled to the full recommended, licensed, or decreed water right quantity, unless the junior user establishes by “clear and convincing” that material injury does not exist, or

that the quantity needed for beneficial use is less or that the senior user is wasting water contrary to the provisions of the Ground Water Act and Idaho law.

- f. Whether the curtailment orders comply with the requirements of the Ground Water Act.

5. No order has been entered sealing any portion of the record.

6. The Appellant requests that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal. The Appellant currently possesses a copy of the transcript, as it was previously prepared in conjunction with the District Court's judicial review of this action. A copy of the transcript may be obtained from Idaho Department of Water Resources. In addition, Appellant requests that a copy of the transcripts from the following hearings held before the district court also be included, and copies requested from the respective court reporters:

- a. Hearing on Oral Argument, May 26, 2009.
- b. Hearing on February 22, 2010, approximately 55 pages estimated cost is \$173.00.
- c. Hearing on August 6, 2010, approximately 40 pages estimated cost is \$100.00.

7. The Appellant requests that ~~all the pleadings, briefs, and attachments~~ documents filed in this case that are listed on the attachment hereto plus all other documents in the clerk's record automatically included under Rule 28 of the Idaho Appellate Rules be made part of the record. Appellants also request, to the extent that the following pleadings are not found in the district court docket of the above-captioned matter, the following pleadings be made part of the record:

- a. Pocatello's Notice of Appeal and Petition for Judicial Review of Agency Action (Final Methodology Order), dated July 21, 2010, originally filed in case no. 2008-000551, renumbered and re-filed by the Gooding County district clerk as case no. 2010-000388.
- b. Notice of Appeal and Petition for Judicial Review of Final Agency Action (Methodology for Determining Material Injury) filed by A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, July 21, 2010, originally filed in case no. 2008-000551, renumbered and re-filed by the Gooding County district clerk as case no. 2010-384.
- c. IGWA's Petition for Judicial Review (Second Amended Order Re: Methodology dated June 23, 2010), July 20, 2010, originally filed in case no. 2008-000551, renumbered and re-filed by the Gooding County district clerk as case no. CV-2010-383.

- d. IGWA's Petition for Judicial Review (Final Order Re: April 2010 Forecast Supply dated June 24, 2010), July 21, 2010 originally filed in case no. 2008-00551, renumbered and re-filed by the Gooding County district clerk as case no. CV-2010-382.
- e. IGWA and Pocatello's Motion for Consolidation, July 21, 2010, case no. CV-2010-382.
- f. Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551, July 23, 2010, case nos. CV-2010-383, CV-2010-384, CV-2010-388.
- g. Surface Water Coalition's 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, July 28, 2010, case no. CV-2010-382.
- h. Order Denying Motion to Renumber; Order Consolidating Proceedings Involving Petitions for Judicial Review of "Methodology Order" and "As-Applied Order", Hon. Eric J. Wildman presiding, July 29, 2010, case no. CV-2010-382, County of Gooding, (consolidated Gooding County cases CV-2010-382, CV2010-383; CV-2010-384, CV-2010-387, CV-2010-388, and Twin Falls County Case CV-2010-3403).
- i. Any additional documents that may be required will be requested pursuant to Idaho Appellate Rule 19.

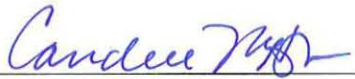
8. The Appellant requests that all of the exhibits included in the agency record be copied and sent to the Supreme Court.

9. I certify:

- a. That a copy of this second amended notice of appeal has been served on the reporter.
- b. That the fee required for the preparation of the reporter's transcript was paid in conjunction with the District Court's judicial review of this action.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED, this 26th day of January 2011.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January, 2011, the above and foregoing document was served in the following manner.

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**CV-2008-551 LIST OF DOCUMENTS REQUESTED FOR APPEAL**

| Filing Date | Document Name  |
|-------------|--|
| 9/25/08     | Petitioners statement of Initial Issues  |
| 10/17/08    | Procedural Order Governing judicial Review of Agency Decision by District Court  |
| 11/7/08     | Filing; R2 Appeal or petition for judicial review, or cross-appeal or cross-petition, from Commission Board/ or body to the District Court. Paid by: Capital Law Receipt No. 0004571 Dated 11/7/2009 Amount \$88 (check) for A&B Irrigation District (plaintiff) |
| 11/21/08    | Petitioner's Statement of Issues (United States)   |
| 4/3/09      | Petitioner US Opening Brief  |
| 4/3/09      | Surface Water Coalition's Joint Opening Brief  |
| 5/1/09      | IDWR Respondent's Brief  |
| 5/1/09      | Respondent Pocatello's Brief   |
| 5/4/09      | Ground Water Users Brief in Response   |
| 5/20/09     | Petitioner US Reply Brief  |
| 5/20/09     | Surface Water Coalitions Joint Reply Brief   |
| 7/24/09     | Order on Petition for Judicial Review  |
| 8/14/09     | Pocatello's Petition for Re-Hearing  |
| 8/14/09     | Ground Water User's Petition for Re-Hearing  |
| 8/25/09     | Scheduling Order on Petitions for Rehearing  |
| 10/9/09     | City of Pocatello's Opening Brief in Support of Petition for Rehearing   |
| 10/13/09    | Ground Water Users Opening Brief on Rehearing  |
| 10/23/09    | Supreme Court Order Assigning Judge Melanson   |
| 11/16/09    | Surface Water Coalition's Response to IGWA's and City of Pocatello Petition for Rehearing  |
| 11/19/09    | IDWR Response Brief on Rehearing   |
| 11/30/09    | Ground Water Users Reply on Rehearing  |
| 11/30/09    | City of Pocatello's Reply Brief in Support of Petition for Rehearing   |
| 3/4/10      | Order Staying Decision on Petition for Rehearing Pending Issuance of Revised Final Order   |
| 3/11/10     | Surface Water Coalitions Objection to Order staying decision   |
| 3/17/10     | Ground Water Users/Pocatello's Response to SWC Objection to Order Staying Decision   |
| 3/25/10     | Order Overruling Objection to Order Staying Decision   |
| 5/13/10     | City of Pocatello and Ground Water Users motion for Stay and to Augment Record   |
| 5/13/10     | City of Pocatello and Ground Water Users Memorandum in Support of Motion for Stay . . .  |
| 5/19/10     | IDWR Response to IGWA and Pocatello Motion for Stay  |
| 5/19/10     | Affidavit of Chris Bromley   |
| 5/28/10     | City of Pocatello & Ground Water Users Response to Motion to Extend Deadline   |

|          |   |
|----------|---|
| 6/3/10   | Surface Water Coalition's Response to IWGA/City of Pocatello Motion to Stay   |
| 6/8/10   | City of Pocatello & Ground Water Users Reply in Support of Motion to Stay and Augment . . .   |
| 6/8/10   | Affidavit of Sarah Klahn  |
| 6/23/10  | Order Denying Motion for Stay and to Augment Record   |
| 8/8/10   | Court Minutes – via video conferencing @ IDWR – John Melanson<br>Boise, ID – Status Conference 10 a.m.<br>Virginia Bailey – Reporter Julie Murphy - Clerk |
| 8/9/10   | Hearing result for Hearing Scheduled held on 08/06/2010 10:00 AM: hearing held video teleconference from Idaho Water Ctr – Boise                          |
| 8/23/10  | Order on Petitions for Rehearing  |
| 8/26/10  | Motion to Clarify/Motion for Reconsideration  |
| 9/3/10   | Surface Water Coalitions Motion for Clarification   |
| 9/9/10   | Amended Order on Petitions for Rehearing  |
| 10/21/10 | Appealed to the Supreme Court (City of Pocatello)   |
| 10/21/10 | Appealed to the Supreme Court (IGWA)  |
| 11/4/10  | Supreme Court Order Consolidating Appeals   |
| 11/22/10 | Order Suspending Appeal (Clerk of the Court)  |
| 11/24/10 | Idaho Ground Water Appropriators, Inc.'s and City of Pocatello's Request to Amend Caption   |
| 11/30/10 | Judgment Nunc Pro Tunc  |
| 11/30/10 | Order Amending Caption  |
| 12/20/10 | Idaho Ground Water's Amended Notice of Appeal   |
| 12/20/10 | City of Pocatello Amended Notice of Appeal  |
| 12/23/10 | Supreme Court Order Adopting District Court Order (re: Caption)   |