

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
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, and Twin Falls Canal Company*

C. Tom 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*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE IDAHO) CM-MP-2009-006
GROUND WATER APPROPRIATORS,)
INC.'S MITIGATION PLAN FOR) **SURFACE WATER**
CONVERSIONS, DRY-UPS, AND) **COALITION'S PETITION**
RECHARGE) **REQUESTING HEARING ON**
) **ORDER APPROVING**
) **MITIGATION CREDITS /**
) **MOTION TO AUTHORIZE**
) **DISCOVERY**

COME NOW, 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 Company (collectively hereafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), by and through counsel of record, and hereby submit their

Petition Requesting Hearing on Order Approving Mitigation Credits Regarding SWC Delivery Call / Motion to Authorize Discovery pursuant to Idaho Code § 42-1701A(3) and the Department's Rules of Procedure (IDAPA 37.01.01. *et seq.*).

INITIAL REASONS FOR PETITION

The Idaho Ground Water Appropriators, Inc. ("IGWA") filed a *Mitigation Plan for Conversions, Dry-Ups and Recharge* on October 6, 2009. The plan described various general actions to reduce groundwater withdrawals from the Eastern Snake Plain Aquifer ("ESPA") including conversions, dry-ups, and recharge. The plan generally described similar actions claimed to have been performed by IGWA or its members in the past. IGWA admitted that the "location and amount" of the proposed Mitigation Activities "will need to be determined on a case-by-case basis in the future". *Mitigation Plan* at 9.

On May 12, 2010 IGWA filed its *Request for Mitigation Credit* ("Request") in this matter for use in the Surface Water Coalition Delivery Call. The Request identified a table of various actions and further alleged those actions will result in an increase in reach gains for the Near-Blackfoot to Minidoka Reach (estimated 5,368 acre-feet). *IGWA Request* at 3. IGWA also filed the affidavit of Charles Brendecke in support of its Request. No technical information or supporting documentation was provided in support of the Request.

Notwithstanding the lack of supporting information, the Director issued an *Order Approving Mitigation Credits Regarding SWC Delivery Call* on May 17, 2010. Using the ESPA Model, the Director identified benefits (5,707 acre-feet) that were estimated to accrue to the Near Blackfoot to Minidoka gage during the 2010 irrigation season as a result of certain actions listed in IGWA's Request. *Order* at 2. Graphs included at Attachment A to the *Order* apparently represent the "ESPA Model runs" that were used to identify the credit approved by the Director.

No other supporting information was provided with the *Order*. At this time, the SWC is unable to verify the estimated benefit identified in the *Order* as compared to the amount requested by IGWA. Consequently, discovery and a hearing is necessary on the actions identified in the Request and the amount identified resulting from those actions as stated in the *Order*.

The Director further states that “The degree of uncertainty associated with application of the ESPA Model is 10 percent”. *Order* at 4. The SWC is unaware of any degree of confidence that has been assigned to the use of the ESPA Model through any technical studies or reports. No information is provided in support of this statement, therefore discovery and a hearing is necessary in order to determine how model uncertainty was applied in the *Order*. Any use of the Model, or any alleged “uncertainty” associated with the Model, to the detriment of senior priority water rights is not supported by Idaho law.

MOTION TO AUTHORIZE DISCOVERY

The SWC hereby moves for order authorizing discovery in this matter pursuant to Rule 521 of the Department’s Rules of Procedure. The SWC requests the opportunity to discover the factual basis and analysis performed by the Director in approving the mitigation credits requested by IGWA. Furthermore, the SWC requests the opportunity to discover and verify the factual basis and analysis performed by IGWA in support of its Request.

REQUEST FOR HEARING

The SWC, pursuant to Idaho Code § 42-1701A(3) and Rule 740.02.b of the Department’s Rules of Procedure, hereby requests a hearing on the Director’s May 17, 2010 *Order Approving Mitigation Credits Regarding SWC Delivery Call*. The SWC reserves the right to amend this petition as necessary.

DATED this 29th day of May, 2010.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

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

FLETCHER LAW OFFICE



W. Kent Fletcher

*Attorneys for Minidoka Irrigation
District*

CAPITOL LAW GROUP PLLC



C. Thomas Arkoosh

Attorneys for American Falls Reservoir District #2

CERTIFICATE OF SERVICE

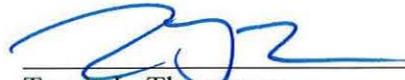
I hereby certify that on this 28th day of May, 2010, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition Requesting Hearing on Order Approving Mitigation Credits Regarding SWC Delivery Call / Motion to Authorize Discovery* on the following by the method indicated:

Interim Director Gary Spackman
c/o Victoria Wigle
State of Idaho
Dept of Water Resources
322 E Front St
Boise ID 83720-0098
*** service by electronic mail and
U.S. Mail

facsimile – 208-287-6700
gary.spackman@idwr.idaho.gov
chris.bromley@idwr.idaho.gov
victoria.wigle@idwr.idaho.gov

Randy Budge
Candice McHugh
Racine Olson
PO Box 1391
Pocatello ID 83204-1391
*** service by electronic mail only

rcb@racinelaw.net
cmm@racinelaw.net


Travis L. Thompson