



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

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 *Statement of Initial Issues* for their *Petition for Judicial Review* previously filed with the Court on September 11, 2008.

#### STATEMENT OF INITIAL ISSUES

1. The Petitioners intend to assert the following issues on judicial review:
  - a. Whether the Director erred by failing to provide for timely and lawful administration of junior priority ground water rights to satisfy the Coalition's senior surface water rights.

- b. Whether the Director unconstitutionally applied the Department's conjunctive management rules (37.03.11 *et seq.*) in an attempt to administer junior priority ground water rights to satisfy the Coalition's senior surface water rights.
- c. Whether the Director erred in failing to recognize the Coalition's decreed senior surface water rights for purposes of conjunctive administration.
- d. Whether the Director erred in using a "replacement water plan" process not provided for by statute or the Department's conjunctive management rules in administration of junior priority ground water rights.
- e. Whether the Director erred in approving "replacement water plans" through various orders issued in 2005 and 2007 and failing to order any water to be provided to Coalition members during those irrigation seasons.
- f. Whether the Director erred in failing to properly provide for "reasonable carryover" water for the Coalition's use in subsequent irrigation seasons.
- g. Whether the Director erred in finding that "reasonable carryover" storage is not required to be provided until some undetermined date during the following irrigation season, hence no storage water is ever provided to "carryover" from one year to the next.
- h. Whether the Director erred in limiting Twin Falls Canal Company's headgate deliveries to its shareholders to 5/8 miner's inch per acre when TFCC's decreed water rights provide for 3/4 miner's inch deliveries.
- i. Whether the Director erred in using a 10% "trim line" to exclude certain junior priority ground water rights from administration.
- j. Whether the Director erred in relying upon evidence not in the record of the contested case.

k. Whether the Director erred in not issuing a final order in compliance with Idaho Code §§ 67-5244 and 67-5246.

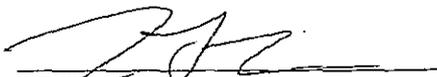
2. Pursuant to I.R.C.P. 84(d)(5), the Coalition reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

DATED this 25<sup>th</sup> day of September, 2008.

**CAPITOL LAW GROUP, PLLC**

**FLETCHER LAW OFFICE**

  
C. Thomas Arkoosh

  
W. Kent Fletcher

*Attorneys for American Falls Reservoir  
District #2*

*Attorneys for Minidoka Irrigation District*

**BARKER ROSHOLT & SIMPSON LLP**

  
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 25<sup>th</sup> 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](mailto:clive.strong@ag.idaho.gov)  
[phil.rassier@idwr.idaho.gov](mailto:phil.rassier@idwr.idaho.gov)  
[john.homan@idwr.idaho.gov](mailto:john.homan@idwr.idaho.gov)  
[chris.bromley@idwr.idaho.gov](mailto:chris.bromley@idwr.idaho.gov)

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

Randy Budge  
Candice McHugh  
P.O. Box 1391  
Pocatello, Idaho 83204-1391

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

Sarah Klahn  
William A. Hillhouse II  
Kelly Snodgrass  
511 16<sup>th</sup> St., Suite 500  
Denver, CO 80202

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

Dean Tranmer  
City of Pocatello  
P.O. Box 4169  
Pocatello, Idaho 83205

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

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

Lyle Swank  
IDWR  
900 N. Skyline Dr.  
Idaho Falls, Idaho 83402-6105

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

Allen Merritt  
Cindy Yenter  
IDWR  
1341 Fillmore St., Suite 200  
Twin Falls, Idaho 83301

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

Josephine Beeman  
409 W. Jefferson  
Boise, Idaho 83702

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

Terry Uhling  
999 Main Street  
Boise, Idaho 83702

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

James Tucker  
Idaho Power Co.  
1221 W. Idaho St.  
Boise, Idaho 83702

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

James Lochhead  
Adam Devoe  
410 17<sup>th</sup> St. 22<sup>nd</sup> Floor  
Denver, Colorado 80202

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

Michael Creamer  
601 W. Bannock  
P.O. Box 2720  
Boise, Idaho 83701-2720

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 Email

  
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