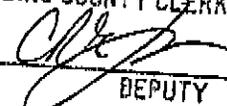


DISTRICT COURT  
GOODING CO, IDAHO  
FILED

2010 OCT 21 AM 9:33

GOODING COUNTY CLERK

BY:  DEPUTY

**LAWRENCE G. WARDEN**  
Attorney General

**CLIVE J. STRONG**  
Deputy Attorney General  
Chief, Natural Resources Division

**GARRICK L. BAXTER, ISB #6301**  
**CHRIS M. BROMLEY, ISB #6530**  
Deputy Attorneys General  
P.O. Box 83720  
Boise, ID 83720-0098  
Telephone: (208) 287-4800  
garrick.baxter@idwr.idaho.gov  
chris.bromley@idwr.idaho.gov

Attorneys for Respondents-Appellants

**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, )

Case No. CV-2008-0000551

UNITED STATES OF AMERICA BUREAU )  
OF RECLAMATION, )

**IDWR'S NOTICE OF APPEAL**

**(Filing Fee: Exempt)**

Petitioners-Respondents, )

vs. )

IDAHO DAIRYMEN'S ASSOCIATION, INC. )

Cross-Petitioner-Respondent, )

vs. )

GARY SPACKMAN, in his capacity as Interim )

IDWR's Notice Of Appeal - 1

Director of the Idaho Department of Water )  
Resources, and THE IDAHO DEPARTMENT OF )  
WATER RESOURCES, )

Respondents-Appellants. )

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; the UNITED STATES OF AMERICA BUREAU OF RECLAMATION; the IDAHO DAIRYMEN'S ASSOCIATION, INC.; AND THE PARTIES' ATTORNEYS OF RECORD AS IDENTIFIED ON THE CERTIFICATE OF SERVICE BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, the IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, INTERIM DIRECTOR ("Appellants"), appeal against the above named respondents to the Idaho Supreme Court from the district court's AMENDED ORDER ON PETITIONS FOR REHEARING; ORDER DENYING SURFACE WATER COALITION'S MOTION FOR CLARIFICATION, entered in the above entitled action on the 9<sup>th</sup> day of September, 2010, the Honorable Judge John M. Melanson presiding.

2. Appellants have a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 is an appealable order pursuant to Rule 11(f), Idaho Appellate Rules.

3. Appellants' preliminary statement of the issues it intends to assert on appeal, which under Rule 17, Idaho Appellate Rules, does not prevent Appellants from asserting other issues, is as follows:

a. If the Director determines in a conjunctive management delivery call that the senior water users' current beneficial use can be met with an amount of water

that is less than the maximum decreed or licensed quantity, must the Director support his determination by clear and convincing evidence or preponderance of the evidence?

4. No order has been entered sealing all or any part of the record in the above entitled action.
5. No transcript is requested.
6. Appellants do not request that any documents be included in the clerk's record other than those automatically included under Rule 28, Idaho Appellate Rules.
7. Appellants request that the agency record, in addition to all exhibits and transcripts, be copied and sent to the Supreme Court.
8. I certify:
  - a. No reporter has been served because no transcript is requested.
  - b. The estimated transcript fee has not been paid because no transcript is requested.
  - c. That Appellants and the State of Idaho are exempt from paying the clerk of the above entitled court the estimated fee for preparation of the clerk's record pursuant to Idaho Code § 67-2301 and Idaho Appellate Rule 23.
  - d. That Appellants and the State of Idaho are exempt from paying the appellate filing fee pursuant to Idaho Code § 67-2301 and Idaho Appellate Rule 23.
  - e. That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 21<sup>st</sup> day of October, 2010.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

CLIVE J. STRONG  
Chief, Natural Resources Division  
Deputy Attorney General



CHRIS M. BROMLEY  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of October, 2010, I caused to be served a true and correct copy of the foregoing IDWR's NOTICE OF APPEAL to the following parties by the indicated methods:

Deputy Clerk Gooding County District Court 624 Main St. P.O. Box 27 Gooding, ID 83330 Facsimile: (208) 934-5085	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
C. Thomas Arkoosh CAPITOL LAW GROUP, PLLC P.O. Box 32 Gooding, ID 83339 <a href="mailto:tarkoosh@capitollawgroup.net">tarkoosh@capitollawgroup.net</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Ignacia Moreno David W. Gehlert Natural Resources Section Environment & Natural Resources Division United States Department of Justice 999 18 <sup>th</sup> Street South Terrace – Suite 370 Denver, CO 80202 <a href="mailto:David.Gehlert@usdoj.gov">David.Gehlert@usdoj.gov</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email

<p>Randall C. Budge  Candice M. McHugh  Thomas J. Budge  RACINE OLSON  P.O. Box 1391  Pocatello, ID 83204-1391  <a href="mailto:rbc@racinelaw.net">rbc@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>  <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Sarah A. Klahn  Mitra M. Pemberton  WHITE JANKOWSKI  511 16<sup>th</sup> St., Ste. 500  Denver, CO 80202  <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a>  <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Michael C. Creamer  Jeffrey C. Fereday  GIVENS PURSLEY LLP  P.O. Box 2720  Boise, ID 83701-2720  <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Dean A. Tranmer  City of Pocatello  P.O. Box 4169  Pocatello, ID 83205  <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>




---

CHRIS M. BROMLEY  
Deputy Attorney General