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**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,**

Petitioners,

vs.

**GARY SPACKMKAN, in his capacity as**

)  
) CASE NO. CV 2008-551  
)  
)  
) **SURFACE WATER COALITION'S**  
) **JOINT NOTICE OF APPEAL**  
)  
) Fee Category: L-4 \$101.00  
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Interim 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** )

TO: THE ABOVE NAMED RESPONDENTS, INTERIM DIRECTOR GARY SPACKMAN AND THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE PARTIES' COUNSEL OF RECORD IDENTIFIED ON THE CERTIFICATE OF SERVICE; AND THE CLERK OF THE ABOVE ENTITLED DISTRICT COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, 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 (collectively hereinafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), appeal against the above named respondents to the Idaho Supreme Court from the district court's final *Amended Order on Petitions for Rehearing*, entered in the above entitled action on September 9, 2010, the Honorable John M. Melanson presiding.

2. The above named 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), I.A.R.

3. The appellants' preliminary statement of issues they intend to assert on appeal, which under I.A.R. 17, does not prevent the appellants from asserting other issues is as follows:

- a. Whether the Director erred in failing to apply the constitutionally protected presumptions and burdens of proof by utilizing a “minimum full supply” or “reasonable in-season demand” baseline for determining material injury to the Coalition’s senior surface water rights.
- b. Whether the Director unconstitutionally applied the conjunctive management rules by excluding certain junior ground water rights from administration.
- c. Whether the district court erred in concluding that a hearing on a mitigation plan must be held prior to curtailment of junior ground water rights causing material injury to senior surface water rights.
- d. Whether the District Court erred by directing the Director of the Idaho Department of Water Resources to bifurcate the final administrative order, despite ruling that the Director must issue one final order.
4. No order has been entered sealing any portion of the record.
5. The Appellants request 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 Appellants currently possess 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 M&M Court Reporting, phone number 1-800-234-9611.

6. The Appellants request that the agency record, including the exhibits, be copied and sent to the Supreme Court.

7. I certify:

- a. That a copy of this 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 the appellant filing fee has been paid.
- e. That service has been made upon all parties to be served pursuant to Rule 20.

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

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District #2*

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North Side Canal Company, Twin Falls Canal  
Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of October, 2010, I served true and correct copies of the *Surface Water Coalition's Joint Notice of Appeal* 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

<p>Clive Strong                  Garrick Baxter                  Chris Bromley                  Deputy Attorneys General                  IDWR                  P.O. Box 83720                  Boise, Idaho 83720-0098  <a href="mailto:clive.strong@ag.idaho.gov">clive.strong@ag.idaho.gov</a>  <a href="mailto:chris.bromley@ag.idaho.gov">chris.bromley@ag.idaho.gov</a>  <a href="mailto:garrick.baxter@ag.idaho.gov">garrick.baxter@ag.idaho.gov</a></p> <p>*** service by electronic mail only</p>	<p>David W. Gehlert                  ENRD – USDOJ                  1961 Stout St. 8<sup>th</sup> Floor                  Denver, Colorado 80294                  *** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>	<p>Kathleen Carr                  US Dept Interior, Office of Solicitor                  Pacific Northwest Region, Boise                  Field Office                  960 Broadway Ste 400                  Boise, Idaho 83706                  *** service by electronic mail only                  facsimile – 208-334-1918  <a href="mailto:kmarioncarr@yahoo.com">kmarioncarr@yahoo.com</a></p>
<p>Randy Budge                  Candice McHugh                  Racine Olson                  PO Box 1391                  Pocatello, Idaho 83204-1391                  *** service by electronic mail only</p> <p><a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a></p>	<p>Sarah A. Klahn                  White &amp; Jankowski, LLP                  511 Sixteenth Street, Suite 500                  Denver, Colorado 80202                  *** service by electronic mail only</p> <p>facsimile – 303-825-5632  <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a></p>	<p>Michael C. Creamer                  Jeffrey C. Fereday                  Givens Pursley                  601 W Bannock St Ste 200                  PO Box 2720                  Boise, Idaho 83701-2720                  *** service by electronic mail only  <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>
<p>A. Dean Tranmer                  City of Pocatello                  PO Box 4169                  Pocatello, Idaho 83201                  *** service by electronic mail only</p> <p>facsimile – 208-234-6297  <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>	<p>Matt Howard                  USBR                  1150 N. Curtis Rd.                  Boise, Idaho 83706-1234  <a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a></p>	

  
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 Travis L. Thompson