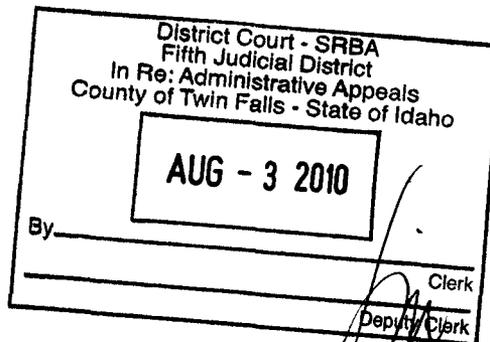


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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioners,

vs.

GARY SPACKMAN, in his capacity as Interim
Director of the Idaho Department of Water
Resources,¹ 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

Case No.: CV-2010-0000382²

**GROUND WATER USERS' INITIAL
ISSUES FOR JUDICIAL REVIEW**

**(Final Methodology Order and
Final As-Applied Order)**

¹ 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).

² On July 29, 2010, the Court issued an *Order Consolidating the Proceedings Involving Petitions for Judicial Review of "Methodology Order" and "As-Applied Order,"* ("Consolidation Order") while the Ground Water Users disagree with the Court's Consolidation Order and will likely request reconsideration, this *Ground Water Users' Initial List of Issues* is being filed in accordance with that Consolidation Order and is filed for both the Final Methodology Order and Final As-Applied Order in CV-2010-382.

CANAL COMPANY AND TWIN FALLS
CANAL COMPANY

COMES NOW, the Petitioner the Idaho Ground Water Appropriators, ("IGWA" or "Ground Water Users") for and on behalf of its members, by and through its undersigned counsel, and hereby files this *Ground Water User's Initial Issues for Judicial Review* on the *Ground Water Users' Petition for Judicial Review*, previously filed with this Court on July 21, 2010 and pursuant to Rule 84 of the Idaho Rules of Civil Procedure.

INITIAL STATEMENT OF THE ISSUES

The following lists the preliminary statement of issues on appeal:

- a. Whether the Director erred by defining initial reasonable in-season demand based solely on historic diversion records without considering non-irrigated acres, beneficial use, crop irrigation requirements, reasonable efficiencies or other factors that bear on the amount of water actually needed by the SWC?
- b. Whether the Director erred by requiring the Ground Water Users to supply water to the SWC to mitigate for depletions that are not caused by ground water pumping, including a decrease in supply due to drought, reservoir evaporation, or changed irrigation practices?
- c. Whether the Director erred by curtailing 73,800 groundwater irrigated acres without making specific findings relating to full economic development as required by the Ground Water Act? Idaho Code §42-226.
- d. Whether the Director erred by using a regression equation that intentionally under-predicts water supply, thus modifying the Joint Forecast of available water supply issued by the United States Bureau of Reclamation and the United States Army Corp of Engineers, which provides the most accepted and accurate forecast for predicting available water supply?
- e. Whether the Director erred by requiring the Ground Water Users to secure an inflated amount of mitigation water prior to May 1, long before actual replacement needs are known, thereby compromising the feasibility and purpose of mitigation and minimizing the beneficial use of groundwater resources?

- f. Whether the Director erred by requiring Ground Water Users to provide replacement water so as to insure that SWC members never again experience diversion less than their historical average diversions and thus, requiring replacement water at times when the surface right has not historically received a full supply.
- g. Whether the Director erred by finding material injury to AFRD2 which is contrary to the evidence in the record?

Pursuant to I.R.C.P. 84(d)(5) the Ground Water Users reserve the right to assert additional issues and/or clarify or further specify the issues for judicial review stated in the petition or which are discovered later.

DATED this 3rd day of August, 2010

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August, 2010, the above and foregoing document was served in the following manner.

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