LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

GARRICK L. BAXTER, ISB #6301
MICHAEL C. ORR, ISB# 6720
Deputy Attorneys General
PO Box 83720
Boise, ID 83720-0098
Tele: (208) 287-4800
FAX: (208) 287-6700

Attorneys for Respondents

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.,	)	Case No. CV-2010-382
Petitioner,	)	(consolidated Gooding County Cases CV-2010-382, CV-2010-383, CV-2010-384, CV-2018-387, CV-2010-388, and Twin Falls County Cases CV-2010-3403, 2010-5520, 2010-5946, 2012-2096, 2013-2305, 2013-4417, and Lincoln County Case CV-2013-155)
vs.	)	
CITY OF POCATELLO,	)	
Petitioner,	)	
vs.	)	
TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, and MINIDOKA IRRIAGION DISTRICT,	)	**IDWR RESPONDENTS' MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO I.R.C.P. 59(e)**
Petitioners,	)	

vs.

GARY SPACKMAN, 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, MINDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY

MOTION

Respondents the Director of the Idaho Department of Water Resources and the Idaho Department of Water Resources ("IDWR"), by and through their counsel of record and pursuant to Rule 59(e) of the Idaho Rules of Civil Procedure, hereby submit this motion to alter or amend the *Judgment* entered in this proceeding on September 26, 2014.[1] This motion requests that this Court amend the *Judgment* only to provide that no remands are required with respect to the following as-applied orders:

- The *Order Revising April 2013 Forecast Supply (Methodology Steps 6-8)* (Aug. 27, 2013)[2];
- The denials of the Surface Water Coalition's petitions for hearings on the *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* (Apr. 13, 2012), the *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (Apr. 17,

[1] Because the *Judgment* is based on the *Memorandum Decision and Order on Petitions for Judicial Review* (Sep. 26, 2014) ("*Memorandum Decision*"), IDWR also moves the Court to alter or amend the *Memorandum Decision*.
[2] *Memorandum Decision* at 38; *Judgment* ¶ 8.

2013), and the *Order Revising April 2013 Forecast Supply (Methodology Steps 6-8)* (Aug. 27, 2013)[3]; and

- The Surface Water Coalition's petitions for judicial review of the *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (Sep. 17, 2010), the *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)* (Nov. 30, 2010), and the *Order Releasing IGWA From 2012 Reasonable Carryover Obligation (Methodology Step 5)* (Jun. 13, 2013).[4]

- The *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4)* (Jun. 24, 2010).[5]

This motion does not request that this Court revisit or change its substantive holdings, or its determinations to set aside certain orders. The grounds for this motion are discussed below. IDWR does not request a hearing on this motion.

ARGUMENT

The question of whether to grant a motion to alter or amend a judgment pursuant to Rule 59(e) lies within the discretion of the district court. *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707, 979 P.2d 107, 109 (1999). Rule 59(e) provides a mechanism to correct errors or clarify a judgment without an appeal. *Id.*

I. There Is Nothing Left to Be Done Before IDWR in Remand Proceedings on the Three Petitions for Hearings the Coalition Filed in 2012 and 2013.

A. The Coalition's Request for Hearing on the *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* (Apr. 13, 2012).

The Coalition's request for a hearing on the *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* (Apr. 13, 2012) asserted two grounds for a hearing: (1) that "[b]ased upon representations by IDWR's counsel" the Coalition was not required to adhere to

[3] *Memorandum Decision* at 43-44; *Judgment* ¶¶ 1, 5-6, 8.
[4] *Memorandum Decision* at 48; *Judgment* ¶¶ 3-4, 7.
[5] The *Memorandum Decision* did not remand the *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4)* but this order was identified as being remanded in the Judgment. *Judgment* ¶ 2.

Step 1's requirement of submitting shape files or confirming in writing that the existing shape files did not vary more than 5% from the previous year; (2) that the Director's April 2012 forecast of natural flow supply and storage allocations was incorrect because it "relied upon the wrong, or an outdated joint forecast." 382 R., pp. 744-46.

The first ground has effectively been addressed by the *Memorandum Decision*, which recognizes that Step 1 "requires the Coalition 'to provide electronic shape files . . . or confirm in writing that the existing electronic shape files from the previous year has not varied by more than 5%.'" *Memorandum Decision* at 40 (emphasis added).[6] As this Court determined, Step 1 expressly "requires" the Coalition to annually submit a new shape file or confirm the previous year's shape file "in writing." Even if it is assumed for the sake of argument that counsel for IDWR made the alleged "representations" to the Coalition, such would not amend the plain language and clear requirement of the Step 1, or excuse the Coalition from complying with Step 1. A remand on this issue is not necessary as no further action is required.

The second ground asserted in the Coalition's petition for a hearing on the *Final Order Regarding April 2012 Forecast Supply (Methodology Steps 1-8)* was that the forecasts of natural flow supply and storage allocations were incorrect because they "relied upon the wrong, or an outdated joint forecast." 382 R., pp. 744-46. The Coalition argued the Director should not have used the early April Joint Forecast issued by the United States Bureau of Reclamation ("USBOR") and the United States Army Corps of Engineer ("USACE") but should have used a forecast that was issued later in time. *Order Denying Petition for Reconsideration; Denying Motion to Authorize Discovery; Denying Request for Hearing (Methodology Steps 1-8)* (May 9, 2012) at 3 (382 R., p.755). This Court addressed this argument in the *Memorandum Decision*

[6] The Coalition has since recognized and complied with this explicit requirement.

when it affirmed the Director's use of the USBOR and USACEs' early April Joint Forecast. *Memorandum Decision* at 22-23. A remand on this question is unnecessary as any argument as to the Director's use of the early April Joint Forecast versus a later issued forecast has been resolved.

Finally, even if there were remaining questions, a remand to IDWR on these issues would be pointless for purposes of addressing in-season shortfalls asserted to have resulted in 2012. The 2012 irrigation season is in the past and any potential in-season shortfall that may have occurred in 2012 cannot be remedied two years later. Moreover, to the extent the Coalition may argue that errors in the Director's application of Methodology Order Steps 1-8 may have resulted in errors in determining "reasonable carryover" shortfalls under the *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* (Nov. 26, 2012). 382 R., pp. 770-78,[7] that challenge is precluded. The only Coalition entity that challenged the "reasonable carryover" order was also the only entity the Director determined to have a "reasonable carryover" shortfall at the end of the 2012 season, American Falls Reservoir District No. 2 ("AFRD #2"), which filed a petition for reconsideration (but did not request a hearing). 382 R., pp. 779-84. The Director issued an order that denied the petition for reconsideration, 382 R., pp. 796-808, and no party sought reconsideration or judicial review of this order.[8]

B. The Coalition's Request for Hearing on the *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (Apr. 17, 2013).

The Coalition's request for a hearing on the *Final Order Regarding April 2013 Forecast Supply (Methodology Steps 1-4)* (Apr. 17, 2013) also asserted two grounds for a hearing. The Coalition first asserted that "[t]he Director's reliance upon a 2002/2004 average of the SWC's

[7] This Court affirmed the "reasonable carryover" methodology. *Memorandum Decision* at 26-27.
[8] AFRD #2 entered into a stipulation with IGWA that it had satisfied its 2012 "reasonable carryover" mitigation obligation to AFRD #2. 382 R., p. 785.

reservoir rights fill after April 1st to predict storage allocations in 2013 was incorrect and did not represent actual hydrologic conditions that existed in the Upper Snake River Basin," and thus "the Director's predicted fill of 59% of the Palisades 1939 water right is erroneous and not based upon the best available hydrologic information." 382 R., pp. 862-63. The second ground asserted by the Coalition was that that Twin Falls Canal Company ("TFCC") had developed a "predictive tool" that "provides a more accurate planning forecast" and "the Director should consider this updated information for purposes of predicting available natural flow to the SWC members during the 2013 season." *Id.* at 863.

A remand on these matters is unnecessary for reasons similar to those previously discussed with respect to the Coalition's request for a hearing on the 2012 forecast: there is no longer a remedy available to the Coalition. In the *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 9)*, the Director found no in-season material injury to 2013 in-season demand. 382 R., pp. 1046-47. Furthermore, any potential Coalition usage of "reasonable carryover" storage in 2013 to meet in-season demands was addressed when mitigation for the reasonable carryover shortfall was ordered in the *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 9)* (Nov. 27, 2013). 382 R., pp.1045-56. While the Coalition petitioned for reconsideration of the 2013 Step 9 order and also the subsequent Step 10 order, and requested hearings, 382 R., pp. 1059-62, 1063-72, 1079-88, the storage allocations for TFCC and AFRD #2 filled in 2014, alleviating the need for "reasonable carryover" mitigation.[9] The parties to the reconsideration proceedings[10] thereafter stipulated to dismissal of the Step 9 and

[9] *See Order Releasing IGWA From 2013 Reasonable Carryover Shortfall Obligation* (Aug. 6, 2014), at 3-4. While this order is not part of the agency record in this judicial review proceeding, the Court may take judicial notice of it pursuant to I.R.E. 201. A copy of the order is attached hereto as Attachment A; it is also available for viewing on IDWR's website, at: http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/default.htm

[10] The Coalition, IGWA, the City of Pocatello, Southwest Irrigation District, and Goose Creek Irrigation District.

Step 10 petitions, and jointly moved for their dismissal.[11] The Director issued an order approving the stipulation and dismissing the Coalition's petitions for reconsideration of the Step 9 and Step 10 orders.[12] No petitions for reconsideration or for judicial review of the dismissal order were filed.

C. The Coalition's Request for Hearing on the *Order Revising April 2013 Forecast Supply (Methodology Steps 6-8)* (Aug. 27, 2013).

The Coalition's request for a hearing on the *Order Revising April 2013 Forecast Supply (Methodology Steps 6-8)* (Aug. 27, 2013), asserted four grounds for a hearing. The Coalition first asserted that the 2013 forecast revision on August 27 was issued "well past the approximate 'halfway' point in the irrigation season" and therefore failed to comply with the *Methodology Order*. 382 R., p 970. This Court agreed. *Memorandum Decision* at 40. Thus, no remand is necessary with respect to the first issue asserted in the Coalition's request for a hearing on the 2013 forecast revision.

The second ground the Coalition identified as a basis for a hearing was that despite revising the predicted in-season material injury to TFCC upwards, the 2013 forecast revision "arbitrarily cut the mitigation owed to TFCC in half, from 14,200 acre-feet to 6,900 acre-feet." The Coalition also asserted that "despite finding in-season injury to AFRD #2 and TFCC in the amount of 105,200 acre-feet, the Director concluded junior priority ground water users would only need to provide 14,200 acre-feet." 382 R., pp. 971-72.

---

[11] *Stipulation And Joint Motion For Order Approving Stipulation And Dismissing Petitions Without Prejudice* (Sep. 4, 2014) (*Stipulation*). While the *Stipulation* is not part of the agency record in this judicial review proceeding, the Court may take judicial notice of it pursuant to I.R.E. 201. A copy of the *Stipulation* is attached hereto as Attachment B; it is also available for viewing on IDWR's website, at: http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/default.htm.

[12] *Order Approving Stipulation And Granting Joint Motion To Dismiss Petitions Without Prejudice (Methodology Steps 9 / 10)* (Sep. 8, 2014). While this order not part of the agency record in this judicial review proceeding, the Court may take judicial notice of it pursuant to I.R.E. 201. A copy of the order is attached hereto as Attachment C; it is also available for viewing on IDWR's website, at: http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/default.htm.

Both of these matters arise from the fact that Step 8 limits the in-season mitigation requirement to the amount of the April shortfall prediction, even if conditions change and the predicted in-season shortfall is subsequently revised upward. *Memorandum Decision* at 11-12. As a result, in 2013 junior ground water users were ordered to provide only the 14,200 acre-feet mitigation required by the April forecast even though the revised forecast predicted a shortfall of 105,200 acre-feet. The Step 8 limitation was also the reason TFCC's mitigation allocation was reduced: while the original forecast had not predicted an in-season shortfall to AFRD #2, the revised forecast did, *compare* 382 R., p. 832 *with id.*, p. 953, and because the total mitigation was limited by Step 8, the Director ordered that the mitigation be split between TFCC and AFRD #2. *Id.*, pp. 954-55.

This Court has already addressed and resolved these matters in holding that Step 8 is contrary to the CM Rules and Idaho law because it limits the in-season mitigation requirement to the amount of the April shortfall prediction, even if conditions change and the predicted in-season shortfall is subsequently revised upward. *Memorandum Decision* at 10-17. In addition, it is no longer possible to remedy any in-season shortfall that occurred in 2013; and as discussed above the Director found no in-season material injury in 2013 and the question of material injury to "reasonable carryover" use during 2013 has been resolved.

The third ground asserted in the Coalition's petition for a hearing on the 2013 forecast revision was not a new issue but rather one the Coalition had already asserted in its previous petition for a hearing on the original 2013 forecast: "as noted by the Coalition back in its May petition, the Director's predicted natural flow and storage supplies available to the SWC was incorrect and not based upon the best available hydrologic information." This point was addressed above in connection with the Coalition's request for a hearing on the *Final Order*

Regarding April 2013 Forecast Supply (Methodology Steps 1-4), and does not support a remand for reasons previously discussed.

The fourth and final ground asserted in the Coalition's request for a hearing on the 2013 forecast revision was that "the Director's conclusion that IGWA secured 14,200 acre-feet within 14 days of the April Forecast Order has been discovered to be in error and should be addressed in a full and formal accounting." 382 R., p. 973. A remand for a hearing on this issue would be contrary to law because it essentially challenges the Director's *Order Confirming IGWA's Notice of Secured Water*, which had been issued more than three months earlier, on May 22, 2014. 382 R., pp. 881-87.[13] The fifteen-day deadline for filing a request for a hearing on the Director's order confirming IGWA's secured water notice had therefore passed. *See* Idaho Code § 42-1701A(3) ("The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing.").

In sum, nothing remains to be addressed in a remand of the denial of the Coalition's request for a hearing on the *Order Revising April 2013 Forecast Supply (Methodology Steps 6-8)* (Aug. 27, 2013). 382 R., pp. 1037-44. For the same reasons, there is nothing left to be addressed in a direct remand of the order revising the 2013 forecast, as ordered by this Court. *Memorandum Decision* at 37-38.

[13] The Coalition's request for a hearing on the 2013 forecast revision was filed on September 6, 2014. 382. R., pp. 969-79.

II. There Is Nothing Left to Be Done Before IDWR in Remand Proceedings on the Three Petitions for Hearings the Coalition Filed in 2012 and 2013.

A. The Coalition Waived its Objections to the April 2010 Forecast Order, the 2010 "Reasonable Carryover" Order, and the 2012 Order Releasing IGWA's Mitigation Obligation.

This Court determined that the Coalition "provided no briefing or argument specific to" its petitions for judicial review of the *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (Sep. 17, 2010), the *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)* (Nov. 30, 2010), and the *Order Releasing IGWA from 2012 Reasonable Carryover Obligation (Methodology Step 5)* (Jun. 13, 2013). *Memorandum Decision* at 48. Under Idaho law it is well established that a party waives an assignment of error by failing to brief or argue it on appeal.[14] *See, e.g., Frogley v. Meridian Joint School Dist. No. 2*, 155 Idaho 558, 565, 314 P.3d 613, 620 (2013) ("This Court holds that 'a party waives an issue cited on appeal if either argument or authority is lacking.' *Estes v. Barry,* 132 Idaho 82, 87, 967 P.2d 284, 289 (1998)."); *Suitts v. Nix,* 141 Idaho 706, 117 P.3d 120 (2005) ("We will not consider assignments of error not supported by argument and authority in the opening brief.").

Given that the Coalition "provided no briefing or argument" on its petitions for review of these three orders, *Memorandum Decision* at 48, the Coalition waived its objections to the orders. Therefore it would be contrary to Idaho law to remand these three orders to IDWR for further proceedings.

B. Remands of the Three Orders Are Unnecessary and Would Create Confusion.

The first order in question is the *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)*. As previously discussed, it is not possible to remedy an in-season injury

[14] Judicial review under the Idaho Administrative Procedures Act is not an original action but rather an appellate proceeding.

several years after it occurred; therefore a remand for further proceedings on the 2010 forecast revision would be pointless for purposes of remedying any in-season injury alleged to have occurred.

Further, any "reasonable carryover" injury that may have occurred in 2010 as a result of an insufficient mitigation obligation under the 2010 forecast revision was effectively remedied without the need for mitigation because storage allocations filled in 2011. Under Step 5, "[i]f the storage allocations held by the members of the SWC fill, there is no reasonable carryover shortfall." 382 R., p.599; *see also id.*, p.601 ("until such time as the reservoir storage space held by members of the SWC fills"). In 2011, the Coalition entities' storage allocations filled. *Compare* 382 R., pp. 702-03 (stating "all storage accounts are predicted to fill and listing the full allocation quantities) *with id.*, pp. 717 (showing actual storage allocation quantities, which exceeded the predicted allocations). Therefore, any argument about a need for mitigation to remedy "reasonable carryover" storage use during 2010 to cover in-season shortfalls was mooted by the abundant 2011 runoff.

This also means that there is no need for a remand on the *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)*. Further, this Court has affirmed the "reasonable carryover" methodology, *Memorandum Decision* at 26-27, and rejected the Coalition's argument that "reasonable carryover" mitigation may not be secured through options but rather must be provided through "transfer of actual mitigation water to the Coalition's storage space up front." *Id.* at 26. Accordingly, there are no issues to be remanded to IDWR under the *Final Order Establishing 2010 Reasonable Carryover (Methodology Step 9)*.

The third order in question, *Order Releasing IGWA from 2012 Reasonable Carryover Obligation (Methodology Step 5)*, provided that "IGWA is no longer required to provide storage

water to AFRD2 for its predicted 2012 reasonable carryover shortfall." 382 R., p. 924.[15] The reason for this order was that while the original forecast had predicted AFRD #2 would not receive a full storage allocation, the storage allocation figures released by the watermaster after the "Day of Allocation" showed that AFRD #2 actually had received a full storage allocation. *Id.*, p. 923. Thus, there was by definition no "reasonable carryover" material injury from 2012 that remained to be remedied, and it was appropriate to release IGWA from its 2012 "reasonable carryover" mitigation obligation. As previously discussed, under the Methodology, any predicted or pre-existing material injury to a Coalition entity's "reasonable carryover" is effectively remedied if the entity's storage allocation fills. This principle is consistent with established storage allocation and exchange practices in the Upper Snake River Basin, and has not been challenged in these proceedings.

III. There Is Nothing Left to Be Done Before IDWR in Remand Proceedings on the Director's *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)*.

In the *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)*, the Director predicted that Twin Falls Canal Company would have an in-season demand shortfall based upon the USBOR and USACE Joint Forecast. 382 R. p. 614. As a result, the Director ordered IGWA to provide mitigation equal to the projected shortfall and the Director also order that the mitigation was not required to be provided until the time of need. *Id.* The Director also ordered that the Water Master secure IGWA's storage water and not allow it to be delivered to any other entity other than the Coalition. *Id.* The *Memorandum Decision* affirmed the Director's use of the USBOR and USACE Joint Forecast and rejected the Coalition's argument

[15] The only Coalition entity that was predicted to have material injury to its "reasonable carryover" was AFRD #2. No other Coalition entity challenged this prediction.

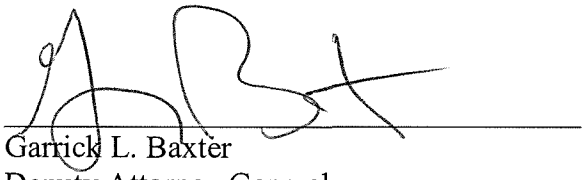
that mitigation water must be provided up front. *Memorandum Decision* at 22-23; 26. As such, there is no issue to address on remand.

CONCLUSION

For the reasons stated above, IDWR respectfully requests this Court amend the *Judgment* and the *Memorandum Decision* to provide that no remands are required with respect to the above identified orders.

Respectfully submitted this 10th day of October 2014.

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



Garrick L. Baxter
Deputy Attorney General

Attorneys for Idaho Department of Water Resources

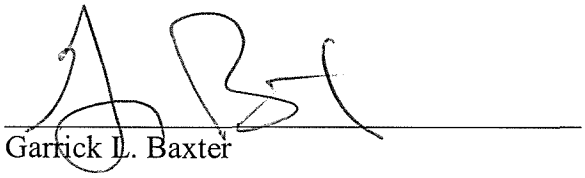
CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

SRBA District Court 253 3rd Avenue N P.O. Box 2707 Twin Falls, ID 83303-2707	☐ U.S. Mail, Postage Prepaid ☒ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: pharrington@idcourts.net
Travis L. Thompson Paul L. Arrington BARKER ROSHOLT 195 River Vista Pl. STE #204 Twin Falls, ID 83301-3030	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: tlt@idahowaters.com pla@idahowaters.com
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: wkf@pmt.org
Randall C. Budge TJ Budge RACINE OLSON NYE & BUDGE P.O. Box 1391 Pocatello, ID 83204-1391	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: rcb@racinelaw.net tjb@racinelaw.net
Sarah Klahn Mitra Pemberton WHITE JANKOWSKI 511 16th St, Suite 500 Denver, CO 80202	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: sarahk@white-jankowsi.com mitrap@white-jankowski.com
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: dtranmer@pocatello.us

John K. Simpson
BARKER ROSHOLT
PO Box 2139
Boise, ID 83701-2139

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ E-Mail: jks@idahowaters.com



Garrick L. Baxter

Attachment A

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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	Docket No. CM-DC-2010-001 **ORDER RELEASING IGWA FROM 2013 REASONABLE CARRYOVER SHORTFALL OBLIGATION**

FINDINGS OF FACT

1. On June 23, 2010, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued his *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Methodology Order"). The Methodology Order established 10 steps for determining material injury to members of the Surface Water Coalition ("SWC").

2. Step 9 of the Methodology Order states that, on or before November 30th of each year, the Director will project the SWC's reasonable carryover shortfall, if any. *Methodology Order* at 37. If the Director projects a reasonable carryover shortfall, junior ground water users shall have fourteen days to establish their ability to secure "a volume of storage water or to conduct other approved mitigation activities that will provide water to the injured members of the SWC equal to the reasonable carryover shortfall for injured members of the SWC." *Id.* at 38.

3. Step 10 of the Methodology Order further explains, "As an alternative to providing the full volume of reasonable carryover shortfall established in Step 9, junior ground water users can request that the Department model the transient impacts of the proposed curtailment based on the Department's water rights data base and the ESPA Model." *Id.*

4. On November 27, 2013, the Director issued his *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 9)* ("2013 Step 9 Order") in which the Director determined the reasonable carryover shortfall obligation for junior ground water users for 2013. The Director concluded that American Falls Reservoir District No. 2 ("AFRD2") and Twin Falls Canal Company ("TFCC") are the only SWC entities with a reasonable carryover shortfall for 2013, and that their final 2013 adjusted carryover shortfall values are 40,819 acre-feet and 5,176 acre-feet respectively, a combined obligation of 45,995 acre-feet. *2013 Step 9 Order* at 5.

Consistent with the Methodology Order, the 2013 Step 9 Order required that junior ground water users establish their ability to provide 40,819 acre-feet to AFRD2 and 5,176 to TFCC or alternatively, notify the Department of their intention to implement Step 10. *Id.* at 5.

5. On November 27, 2013, the Idaho Ground Water Appropriators, Inc. ("IGWA"), on behalf of junior ground water users, requested that the Department implement Step 10 of the Methodology Order and model the transient impacts of the proposed curtailment based on the Department's water rights database and the Eastern Snake Plain Aquifer Model. Email from Randy Budge, Atty. for IGWA, to Gary Spackman, Dir. of IDWR, *SWC Delivery Call, Docket No. CM-DC-2010-001 - Reasonable Carryover* (Nov. 27, 2013).

6. On December 16, 2013, the Director issued the *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)* ("2013 Step 10 Order"). The 2013 Step 10 Order concluded that IGWA's obligation pursuant to Step 10 for 2013 is 11,924 acre-feet

7. The 2013 Step 10 Order provided junior ground water users fourteen days to establish, to the satisfaction of the Director, of their ability to provide 11,924 acre-feet to AFRD2 and TFCC to satisfy Methodology Step 10.

8. On December 31, 2013, IGWA filed with the Department *IGWA 's Notice of Secured Water Supply Re 2013 Methodology Order (Step 10)* ("Notice") informing the Department that it had secured 11,924 acre-feet of storage water to fully satisfy its 2013 Step 10 reasonable carryover obligation.

9. The Notice explained that IGWA has 10,879 acre-feet of storage water remaining from its 2013 leases to meet the Step 10 reasonable carryover shortfall. *Notice* at 2. Because IGWA does not own storage space in any reservoir, it needs to assign its remaining storage water to another entity to utilize it the next season. IGWA's Notice explained that it had assigned 6,500 acre-feet to the State of Wyoming and the remaining balance of 4,379 acre-feet to TFCC. *Id.* IGWA also explained that it had "a verbal commitment from Fremont-Madison Irrigation District to lease the shortfall of 1,045 acre-feet which will satisfy the full 2013 reasonable carryover obligation." *Id.*

10. On January 10, 2014, the Director issued his *Order Determining Deficiency in IGWA's Notice of Secured Water; Curtailing Ground Water Rights Junior to July 1, 1985* ("Deficiency Order"). The Deficiency Order concluded that IGWA failed to satisfy the 2013 Step 10 Order because its Notice did not provide the Director with adequate documentation establishing that it had secured the water necessary to meet the carryover obligation. *Deficiency Order* at 4.

11. Due to IGWA's failure to satisfy the 2013 Step 10 Order, the Deficiency Order also ordered the curtailment of certain ground water users with consumptive water rights bearing priority dates junior to July 1, 1985, commencing on February 18, 2014, at 12:01 a.m. A list of the affected water rights was attached to the Deficiency Order. The Deficiency Order afforded IGWA with the opportunity to lift the curtailment by providing the Director with the appropriate documentation of its secured water supply.

12. On January 14, 2014, *IGWA's Amended Notice of Storage Water Supply Re 2013 Methodology Order (Step 10)* ("Amended Notice"), was filed with the Department. IGWA's Amended Notice states that on January 10, 2014, the Water District 1 Rental Pool Subcommittee approved its request for an extension of time to assign its remaining storage water. The Amended Notice also states that in order to establish that it had secured the required volume of storage water to mitigate for the predicted shortfall to reasonable carryover, IGWA assigned 10,879 AF of storage water to TFCC and AFRD2 and also provided the Director with a signed option to lease the remaining 1,045 AF from North Fork Reservoir Company. *Order Adopting IGWA's Amended Notice of Secured Water (Methodology Step 10)* at 3.

13. On February 2, 2014, the Director issued his *Order Adopting IGWA's Amended Notice of Secured Water (Methodology Step 10)* stating that IGWA had satisfied the requirements of the 2013 Step 10 Order and that the curtailment required by the Deficiency Order was revoked.

14. The Day of Allocation in Water District 01 occurred on or about July 5, 2014. On or about July 9, 2014 the watermaster for Water District 01 published the storage allocations for storage space holders. Both AFRD2 and TFCC will receive their full storage allocation this season, less evaporation.

CONCLUSIONS OF LAW

1. In the 2013 Step 10 Order, the Director predicted AFRD2 and TFCC would suffer a reasonable carryover shortfall of 11,924 acre-feet. In response, IGWA assigned 10,879 AF of storage water to TFCC and AFRD2 and also provided the Director with a signed option to lease the remaining 1,045 AF from North Fork Reservoir Company.

2. The Day of Allocation in Water District 01 occurred on or about July 5, 2014. On or about July 9, 2014 the watermaster for Water District 01 published the storage allocations for storage space holders. Both AFRD2 and TFCC will receive a full storage allocation this season, less evaporation.

3. Methodology Step 5 states in pertinent part: "If the storage allocations held by members of the SWC fill, there is no reasonable carryover shortfall." *Methodology Order* at 36. Because both AFRD2 and TFCC will receive a full storage allocation, there is no reasonable carryover shortfall.

4. Because there is no reasonable carryover shortfall, the Director releases IGWA from its 2013 reasonable carryover obligation. The watermaster for Water District 01 is instructed to allow access to the volume of water secured from North Fork Reservoir Company for the predicted reasonable carryover shortfall.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

Because both AFRD2 and TFCC will receive a full storage allocation, IGWA is no longer required to provide storage water to AFRD2 and TFCC for the predicted 2013 reasonable carryover shortfall. The watermaster for Water District 01 is hereby instructed to allow access to the volume of water it secured to meet the 2013 predicted reasonable carryover shortfall.

Dated this 6th day of August, 2014.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2014, the above and foregoing, was served by the method indicated below, and addressed to the following:

John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Randall C. Budge Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Kathleen M. Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th Street South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

Sarah A. Klahn Mitra Pemberton WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
William A. Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Allen Merritt Cindy Yenter IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

Kimi White
Paralegal

Attachment B

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
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

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 American Falls Reservoir District #2 and Minidoka Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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	Docket No. CM-DC-2010-001 **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION AND DISMISSING PETITIONS WITHOUT PREJUDICE**

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 Canal Company (collectively the "Surface Water Coalition" or "Coalition"), Southwest Irrigation District and Goose Creek Irrigation District ("SWID/GCID"), the Idaho Ground Water Appropriators, Inc., and the City of Pocatello, by and through counsel of record, and stipulate and jointly move as follows:

plans are considered compared to those of other junior ground water users. The parties will seek to try and find an acceptable process and calculation method that can be implemented in future orders.

5. The parties will submit a proposed order for the Director to approve with the terms identified above.

MOTION

The parties move the Director for an order approving the above stipulation and dismissing the Coalition's petitions requesting hearing without prejudice. No oral argument is requested.

DATED this 4th day of September, 2014.

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson
Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company

FLETCHER LAW OFFICE

W. Kent Fletcher
Attorneys for Minidoka Irrigation District and American Falls Reservoir District #2

RACINE OLSEN

T.J. Budge
Attorneys for IGWA

WHITE & JANKOWSKI LLP

Sarah Klahn
Attorneys for City of Pocatello

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY LLP

William Parsons
Attorneys for SWID and GCID

plans are considered compared to those of other junior ground water users. The parties will seek to try and find an acceptable process and calculation method that can be implemented in future orders.

5. The parties will submit a proposed order for the Director to approve with the terms identified above.

MOTION

The parties move the Director for an order approving the above stipulation and dismissing the Coalition's petitions requesting hearing without prejudice. No oral argument is requested.

DATED this _____ day of September, 2014.

BARKER ROSHOLT & SIMPSON LLP

_____
Travis L. Thompson
Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company

FLETCHER LAW OFFICE

_____
W. Kent Fletcher
Attorneys for Minidoka Irrigation District and American Falls Reservoir District #2

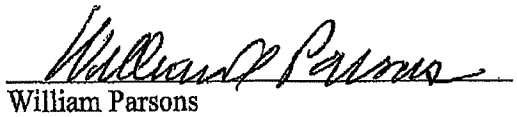
RACINE OLSEN

_____
T.J. Budge
Attorneys for IGWA

WHITE & JANKOWSKI LLP

_____
Sarah Klahn
Attorneys for City of Pocatello

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY LLP


William Parsons
Attorneys for SWID and GCID

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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	Docket No. CM-DC-2010-001 **ORDER APPROVING STIPULATION AND GRANTING JOINT MOTION TO DISMISS PETITIONS WITHOUT PREJUDICE** (Methodology Steps 9 / 10)

BACKGROUND

1. The Director issued the *Final Order Establishing Reasonable Carryover (Methodology Step 9)* on November 27, 2013 and the *Final Order Establishing Reasonable Carryover (Methodology Step 10)* on December 16, 2013. The Coalition disputes the Director's proportionate reduction (10%) of the identified mitigation obligation related to junior groundwater use within the Southwest and Goose Creek Irrigation Districts (SWID / GCID). The Coalition filed requests for hearing on these orders, which were granted by the Director. *See Orders Granting Request for Hearing (Methodology Steps 9 / 10)* (January 2 & 21, 2014).

2. The Director held pre-hearing conferences concerning the Coalition's petitions and the parties have participated in various teleconferences with IDWR. The Director then scheduled a hearing for September 22-24, 2014.

3. The Director's methodology for conjunctive administration is presently on appeal and is pending before the District Court (Gooding County Dist. Ct., Fifth Jud. Dist., Consolidated Case No. CV-2010-382). In addition, the Director recently issued the *Order Releasing IGWA from 2013 Reasonable Carryover Shortfall Obligation* (August 6, 2014).

4. On September ___, 2014, the Coalition, Idaho Ground Water Appropriators, Inc., and the City of Pocatello filed a *Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Petitions Without Prejudice.*

Attachment C

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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	Docket No. CM-DC-2010-001 **ORDER APPROVING STIPULATION AND GRANTING JOINT MOTION TO DISMISS PETITIONS WITHOUT PREJUDICE** (Methodology Steps 9 & 10)

BACKGROUND

1. The Director ("Director") of the Idaho Department of Water Resources ("Department") issued his *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 9)* on November 27, 2013, and *Final Order Establishing 2013 Reasonable Carryover (Methodology Step 10)* on December 16, 2013. The Surface Water Coalition ("SWC") filed requests for hearing on these orders, which were granted by the Director. *See Order Granting Request for Hearing (Methodology Steps 9)*(Jan. 2, 2014) and *Order Granting Request for Hearing (Methodology Steps 10)*(Jan. 21, 2014). The SWC disputes the Director's proportionate reduction (10%) of the identified mitigation obligation related to junior groundwater use within the Southwest and Goose Creek Irrigation Districts ("SWID/GCID") in the orders.

2. The Director held pre-hearing conferences concerning the SWC's petitions and the parties have participated in various teleconferences with IDWR. The Director then scheduled a hearing for September 22-24, 2014.

3. The Director's methodology for conjunctive administration is presently on appeal and is pending before the District Court (Gooding County Dist. Ct., Fifth Jud. Dist., Consolidated Case No. CV-2010-382). In addition, the Director recently issued the *Order Releasing IGWA from 2013 Reasonable Carryover Shortfall Obligation* (August 6, 2014).

4. On September 4, 2014, the SWC, Idaho Ground Water Appropriators, Inc., and the City of Pocatello filed a *Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Petitions Without Prejudice.*

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

The Director APPROVES the stipulation filed by the parties. The Director agrees that the Department will participate with the parties, informally and in good faith, to discuss a process and/or method to identify how individual ground water use, injury, obligations, and mitigation plans are considered compared to those of other junior ground water users. IDWR and the parties will seek to try and find an acceptable process and calculation method that can be implemented in future orders.

The Director GRANTS the joint motion to dismiss the Coalition's petitions without prejudice. The Director finds that the parties reserve all rights to challenge the Director's calculations and the proportionate reduction assigned to SWID/GCID (10%) in the 2013 *Step 9/10 Orders* referenced above, including any application in future orders.

Dated this 8th day of September, 2014.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2014, the above and foregoing, was served by the method indicated below, and addressed to the following:

John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Randall C. Budge Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Kathleen M. Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th Street South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

Sarah A. Klahn Mitra Pemberton WHITE JANKOWSKI 511 16th St., Ste. 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
William A. Parsons Parsons, Smith & Stone, LLP P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Lyle Swank IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402 lyle.swank@idwr.idaho.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
Allen Merritt Cindy Yenter IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

Deborah J. Gibson

Deborah Gibson
Admin. Assistant for the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) The petition for reconsideration is disposed of; or
(b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.