

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, 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*

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.;)	Consolidated Case No. CV-2010-382
)	
Petitioner,)	
)	SURFACE WATER COALITION'S
vs.)	JOINT PETITION FOR
)	REHEARING
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 IRRIGATION DISTRICT,)	
)	
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,
 MINIDOKA IRRIGATION DISTRICT,
 NORTH SIDE CANAL COMPANY, AND
 TWIN FALLS CANAL COMPANY

COME 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”)¹, by and through their undersigned counsel, and pursuant to I.R.C.P. 84(r) and I.A.R. 42 hereby file this *Joint Petition for Rehearing* in the above-captioned matter.

The Coalition respectfully requests the Court to rehear the following issue:

- 1. Whether the Court’s analysis and language in Part V.A.iv constitutes an “advisory opinion” on a mitigation plan not presently before the Court on judicial review and should be removed from the *Memorandum Decision and Order on Petitions for Judicial Review*?**

¹ The term “Surface Water Coalition” is a shorthand reference to the seven individual canal companies and irrigation districts that requested conjunctive administration of hydraulically connected ground water rights in 2005. Each entity holds and relies upon their individual natural flow and storage water rights to deliver water to their respective shareholders and landowners. The “Coalition” does not own water rights collectively or share water supplies.

In the September 26, 2014 *Memorandum Decision and Order on Petitions for Judicial Review* the Court ruled on petitions for judicial review filed by the Surface Water Coalition, the Idaho Ground Water Appropriators, Inc., and the City of Pocatello. As to the Director's Methodology Order (382 R. 564), the parties filed separate notices of appeal and petitions for judicial review on or about July 21, 2010 (IGWA – Case No. 2010-383; SWC – Case No. 2010-384; and Pocatello – Case No. 2010-388). None of these petitions identified review of a final order concerning a mitigation plan filed under the Department's conjunctive management rules. See IDAPA 37.03.11.43 (CM Rule 43). IGWA then filed a document further identifying issues for judicial review on August 3, 2010. See *Ground Water Users' Initial Issues for Judicial Review*. Similar to its earlier petition, IGWA did not seek review of any final order concerning a mitigation plan. Finally, the parties submitted their opening briefs on or about June 13, 2014, which identified the issues on appeal for the Court's consideration. See *SWC Opening Br.* at 3-4; *IGWA Opening Br.* at 14; *Pocatello Br.* at 10. None of the parties' opening briefs list review of any final order concerning a mitigation plan as an issue on appeal in this case.

Pursuant to the Idaho Administrative Procedure Act, the Court is limited to review the Director's Methodology Order and the underlying administrative record. See I.C. §§ 67-5277, 5270 *et seq.*; *Greenfield Village Apartments, L.P. v. Ada County*, 130 Idaho 207, 209 (1997); *Dovel v. Dobson*, 122 Idaho 59, 61 (1992). The Court's analysis in Parts V.A.i - iii, and B. – F. specifically addresses issues on appeal raised by the parties against the backdrop of an established administrative record. See *Memorandum Decision* at 3, n. 1 (i.e. 382 R. ____; 551 R. ____). However, the review in Part V.A.iv of the Court's decision does not address any stated issue on appeal and instead identifies a "possible mitigation plan" or what "could" be accomplished with a hypothetical mitigation plan.

Since this judicial review proceeding does not concern an appeal from any final agency order on a mitigation plan, including an accompanying record on the same, this Court did not have jurisdiction on that issue and there was no justiciable controversy to decide. *See* I.C. § 67-5270; *see e.g. Wylie v. State, Idaho Transp. Bd.*, 151 Idaho 26, 31-32 (2011); *A&B Irr. Dist. v. State (In re SRBA)*, 2014 Ida. Lexis 203, (Idaho Aug. 4, 2014) (“This Court must be especially circumspect when deciding water law issues of first impression with potentially far-reaching consequences. Without a complete factual record and no injury alleged we decline to issue an advisory opinion on whether water stored under a storage right counts toward the fill of that right if it is used by the reservoir operator for flood control purposes.”) (emphasis added).

Consequently, the Court should remove its analysis concerning a hypothetical mitigation plan that was not the subject of judicial review. Within fourteen days the Coalition will submit a brief in support of its *Joint Petition for Rehearing*.

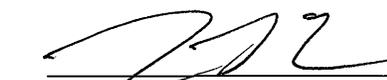
DATED this 10th day of October, 2014.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



John K. Simpson
Travis L. Thompson
Paul L. Arrington



W. Kent Fletcher

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

*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 10th day of October, 2014, I served true and correct copies of the foregoing upon the following by the method indicated:

SRBA District Court
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

Michael Orr
Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

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

Randy Budge
T.J. Budge
P.O. Box 1391
Pocatello, Idaho 83204-1391

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

Sarah Klahn
Mitra Pemberton
511 16th 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


Travis L. Thompson