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District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho
JUL 26 2010
By _____ Clerk
_____ Deputy Clerk

**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,

CITY OF POCATELLO,

Petitioners,

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
Interim Director of the Idaho Department of
Water Resources, and THE IDAHO

Case Nos.: CV- 2010-0000383
CV-2010-0000384
CV-2010-0000388

**IGWA AND POCATELLO'S MOTION TO
RENUMBER APPEALS AND TO FILE
APPEALS IN GOODING COUNTY CASE
NO. CV-2008-00551**

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

COMES NOW, the Idaho Ground Water Appropriators (“IGWA”) and the City of Pocatello (“City” or “Pocatello”), by and through undersigned counsel and move the Court to renumber and file the appeals in Gooding County Case Nos. CV-2010-000383, CV-2010-000384, and CV-2010-000388 in Gooding County Case No. CV-2008-000551 (the “551 Case”).

On July 21, 2010, IGWA, Pocatello and the Surface Water Coalition¹ all filed appeals and petitions for judicial review in the 551 Case. However, the Gooding County Clerk assigned new case numbers to those July 21, 2010 petitions. IGWA’s appeal, *IGWA’s Petition for Judicial Review (Second Amended Final Order Re: Methodology dated June 23, 2010)* has been assigned Gooding County Case No. CV-2010-000383; Pocatello’s *Notice of Appeal and Petition for Judicial Review of Agency Action (Final Methodology Order)* has been assigned Gooding County Case No. CV-2010-000388; and the Surface Water Coalition’s *Notice of Appeal and Petition for Judicial Review of Agency Action (Methodology for Determining Material Injury)* was assigned Gooding County Case No. CV-2010-000384. These three appeals are part of the

¹ The Surface Water Coalition is made up of seven irrigation entities: A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company.

ongoing appeal in the 551 Case that has been handled for the past two years by the Honorable John M. Melanson.

The 551 Case involves an appeal of the Director's final order in the Surface Water Coalition's Delivery Call *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*. The Honorable John M. Melanson has held a final decision in the pending appeal in the 551 case in his *Order Staying Decision for Rehearing Pending Issuance of Revised Final Order* issued March 4, 2010 in the 551 Case. In that Order the Court ordered that it would hold in abeyance the pending petitions for rehearing until "the time periods for filing a motion for reconsideration and petition for judicial review of [the Final Methodology Order] have expired." *Id.* at 3. As such, Judge Melanson has not issued a final order on the pending petition for judicial review in the 551 case and is waiting for any other petitions for judicial review to be filed in the 551 case for his consideration before issuing a final order.

In response to the March 4, 2010, Order and the previous remand in the 551 Case, the Director issued the *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Final Methodology Order") on June 23, 2010.² The IGWA, Pocatello and the Surface Water Coalition have all appealed the *Final Methodology Order* in the 551 Case as part of the ongoing matter that was remanded to IDWR.

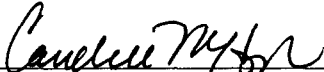
² *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company*.

Because all parties filed their appeals in Gooding County Case No. CV-2008-000551, there appears to be no dispute among the parties that these appeals and petitions for judicial review should be part of the 551 Case. Because the appeals are all part of the pending 551 Case, IGWA and Pocatello request that Gooding County Case Nos. CV-2010-000383, CV-2010-000388 and CV-2010-000384 be eliminated and that the appeals filed in those cases be renumbered and filed in CV-2008-000551.

Petitioners do not request argument on this Motion.

Dated this 23rd day of July, 2010.

RACINE OLSON NYE BUDGE &
BAILEY, CHTD.

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July, 2010, the above and foregoing document was served in the following manner.

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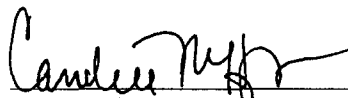
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