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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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,**	CASE NO. CV_____
Petitioners,	Fee Category L.3 - $96.00
vs.	**NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION**
GARY SPACKMAN, in his capacity as Director of the Idaho Department of Water Resources, and **THE IDAHO DEPARTMENT OF WATER RESOURCES,**	**(August 2013 Revised Forecast Supply Order)**
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"), by and through their undersigned counsel, and hereby file this Petition seeking judicial review of a final agency action by the Idaho Department of Water Resources.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of final orders issued by the Director of the Idaho Department of Water Resources, Gary Spackman, on August 27th and September 27th 2013.

2. The Director refused to hold an administrative hearing and denied the Petitioners' statutory right to a hearing provided by I.C. § 42-1701A(3).

JURISDICTION AND VENUE

3. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.

4. This Court has jurisdiction over this action pursuant to Idaho Code § 67-5272.

5. Venue lies in this Court pursuant to Idaho Code § 67-5272 because Petitioner TFCC conducts business in Twin Falls County, Idaho and certain water rights, which are the

subject of the agency action, are delivered to the company's shareholders that own property located in Twin Falls County.

6. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. The Coalition has attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

7. The Director's September 27, 2013 *Order Denying Petition for Reconsideration; Denying Motion to Authorize Discovery; Denying Request for Hearing (Methodology Steps 6 - 8)*("*Final Order*") is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

8. Petitioner, American Falls Reservoir District #2 (AFRD #2), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Shoshone, Idaho. AFRD #2 delivers water to its landowners in Jerome, Lincoln, and Gooding Counties.

9. Petitioner, A&B Irrigation District (A&B), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Rupert, Idaho. A&B delivers water to its landowners in Jerome and Minidoka Counties.

10. Petitioner, Burley Irrigation District (BID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Burley, Idaho. BID delivers water to its landowners in Cassia County.

11. Petitioner, Milner Irrigation District (Milner), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Murtaugh, Idaho. Milner delivers water to its landowners in Cassia and Twin Falls Counties.

12. Petitioner, Minidoka Irrigation District (MID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Rupert, Idaho. MID delivers water to its landowners in Cassia and Minidoka Counties.

13. Petitioner, North Side Canal Company ("NSCC"), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Jerome, Idaho. NSCC delivers water to its shareholders in Jerome, Gooding, and Elmore Counties.

14. Petitioner, Twin Falls Canal Company ("TFCC"), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC §§ 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Twin Falls County. TFCC delivers water to its shareholders in Twin Falls County.

15. Respondent, Gary Spackman is the Director of the Idaho Department of Water Resources, and a resident of Ada County.

16. Respondent, Idaho Department of Water Resources ("Department"), is the executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701, *et seq.*, with its state office located at 322 E. Front St., Boise, Ada County, Idaho.

STATEMENT OF INITIAL ISSUES

17. The Petitioners intend to assert the following issues on judicial review:

a. Whether the Director's *Final Order* is supported by substantial evidence?

b. Whether the Director's application of his methodology in the *Final Order* violates Idaho law?

c. Whether the Director's actions are arbitrary and capricious or otherwise not in accordance with the law?

d. Whether the Director's denial of the Petitioners' request for a hearing violates their constitutional right to due process and the statutory right to a hearing pursuant to I.C. § 42-1701A(3)?

18. Pursuant to I.R.C.P. 84(d)(5), the Coalition reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

AGENCY RECORD

19. Judicial review is sought of the Director's September 27, 2013 *Final Order*.

20. The Department and Director refused to hold an administrative hearing on the matter so no transcript of a hearing is available.

21. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

22. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

DATED this 29th day of October, 2013.

BARKER ROSHOLT & SIMPSON LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of October, 2013, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Final Agency Action* upon the following by the method indicated:

Twin Falls County Court 425 Shoshone St. N. P.O. Box 126 Twin Falls, Idaho 83303	____ U.S. Mail, Postage Prepaid ✓ Hand Delivery ____ Overnight Mail ____ Facsimile ____ Email
Courtesy Copy Snake River Basin Adjudication 427 Shoshone Street N. P.O. Box 126 Twin Falls, Idaho 83303	✓ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile ____ Email
Garrick Baxter Deputy Attorneys 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 Racine Olsen Chtd. P.O. Box 1391 Pocatello, Idaho 83204-1391	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile ✓ Email
Sarah Klahn Mitra Pemberton White & Jankowski LLP 511 16th St., Suite 500 Denver, Colorado 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

Kathleen Carr U.S. Dept. of Interior 960 Broadway Ste. 400 Boise, Idaho 83706	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email
Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Road Boise, Idaho 83706-1234	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email
Lyle Swank IDWR 900 N .Skyline Dr. Idaho Falls, Idaho 83402-6105	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email
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Michael C. Creamer Jeffrey C. Fereday 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701-2720	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email
David W. Gehlert Natural Resources Section U.S. Department of Justice 1961 Stout Street, 8th Floor Denver, Colorado 80294	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email

Travis L. Thompson