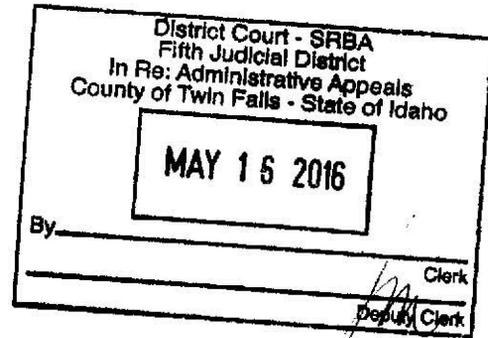


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*Attorneys for the City of Blackfoot*



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

THE CITY OF BLACKFOOT,

Petitioner/Appellant,

v.

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 APPLICATION FOR  
PERMIT NO. 27-12261

In the name of the City of Blackfoot.

Case No. CV-2015-1687

**NOTICE OF APPEAL**

Fee Category L.4. – \$129.00

**TO: THE ABOVE-NAMED RESPONDENTS, GARY SPACKMAN, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE IDAHO DEPARTMENT OF WATER RESOURCES;**  
**THE RESPONDENTS' ATTORNEY, GARRICK L. BAXTER, DEPUTY ATTORNEY GENERAL, P.O. BOX 83720, BOISE, IDAHO 73720, TELEPHONE (208) 287-4800, GARRICK.BAXTER@IDWR.IDAHO.GOV;**  
**THE INTERVENORS, THE SURFACE WATER COALITION;**  
**THE INTERVENORS' ATTORNEYS, BARKER ROSHOLT & SIMPSON LLP, 195 RIVER VISTA PLACE, SUITE 204, TWIN FALLS, IDAHO 83301-3029, TELEPHONE (208) 733-0700, PLA@IDAHOWATERS.COM, AND W. KENT FLETCHER, P.O. BOX 248, BURLEY, IDAHO 83318, TELEPHONE (208) 678-3250, WKF@PMT.ORG; AND**  
**THE CLERK OF THE ABOVE ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The City of Blackfoot, by and through its above-listed counsel of record, appeal against the above-named respondents, Gary Spackman, in his official capacity as the Director of the Idaho Department of Water Resources, and the Idaho Department of Water Resources, to the Idaho Supreme Court from the *Memorandum Decision and Order and Judgment*, both filed April 6, 2016, entered in the above-entitled action by the Honorable Eric J. Wildman, District Judge, presiding. A copy of the judgment or order being appealed is attached to this notice.
2. The Appellant has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1, above, are appealable orders under and pursuant to Rule 11(a)(1) and 11(f), Idaho Appellate Rules.
3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal (which does not prevent the Appellant from asserting other issues) is as follows:
  - a. Whether the Director erred in a manner described in Idaho Code § 67-5279(3) by failing to consider the *Settlement Agreement, IDWR Transfer*

*of Water Right, Transfer No. 72385, June 2006*, as an element of Water Right No. 01-181C.

- b. Whether the Director erred in a manner described in Idaho Code § 67-5279(3) by not engaging in contractual interpretation of the *Settlement Agreement, IDWR Transfer of Water Right, Transfer No. 72385, June 2006*.
  - c. Whether the Director erred in a manner described in Idaho Code § 67-5279(3) by concluding that “[n]othing in Transfer No. 72[3]85 [sic] or the Partial Decree issued by the Snake River Basin Adjudication indicate Right 01-181C can be used for ground water recharge.” *Final Order* at 2. Stated another way, whether the City gave away its ability to use 01-181C to mitigate for 27-12261 when it entered into the *Settlement Agreement, IDWR Transfer of Water Right, Transfer No. 72385, June 2006*.
  - d. Whether the Director erred in a manner described in Idaho Code § 67-5279(3) by concluding that the City must file a transfer if it wants to use 01-181C for mitigation purposes. *Final Order* at 2.
  - e. Whether the Director erred in a manner described in Idaho Code § 67-5279(3) by determining that “any recharge to the aquifer achieved by diversion and use under Right 01-181C, is merely incidental recharge [under Idaho Code § 42-234(5)] and cannot be ‘used as a basis for claim of a separate or expanded water right.’”
- 4. There is no order sealing any portion of the record in this case.
  - 5. The Appellant requests that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made part of the record on appeal. The Appellant

currently possesses a copy of the transcript, as it was previously prepared by the Idaho Department of Water Resources in conjunction with the District Court's judicial review of this action. A copy of the transcript may be obtained from the Idaho Department of Water Resources or the City of Blackfoot. In addition, the Appellant requests that a copy of the transcript from the hearing on the City of Blackfoot's *Petition for Judicial Review*, held before the District Court on March 10, 2016, also be included. No other transcripts are requested.

6. The Appellant requests that all pleadings and attachments filed in this case along with all other documents in the clerk's record automatically included under Rule 28 of the Idaho Appellate Rules be made part of the record. Specifically, the pleadings are as follows:
  - a. Notice of Appeal and Petition for Judicial Review of Final Agency Record, filed October 16, 2015;
  - b. Notice of Reassignment, filed October 26, 2015;
  - c. Procedural Order Governing Judicial Review of Final Order of Director of Idaho Department of Water Resources, filed October 27, 2015;
  - d. Surface Water Coalition's Notice of Appearance, filed November 4, 2015;
  - e. Notice of Lodging Agency Record and Transcript with the Agency, filed November 10, 2015;
  - f. Order Treating Appearance as Motion to Intervene and Granting Same, filed November 16, 2015;
  - g. Order Settling Agency Record and Transcript, filed December 8, 2015;
  - h. Notice of Lodging the Settled Agency Record and Transcript with the District Court, filed December 8, 2015;

- i. Agency's Certificate of Record, filed December 8, 2015;
- j. Petitioner's Opening Brief, filed January 12, 2016;
- k. Unopposed Motion for Extension of Time to File Respondents' Brief, filed February 8, 2016;
- l. Affidavit of Meghan Carter in Support of Unopposed Motion for Extension of Time to File Respondents' Brief, filed February 8, 2016;
- m. Order Granting Motion for Extension of Time, filed February 8, 2016;
- n. Respondent's Brief, filed February 11, 2016;
- o. Surface Water Coalition's Response Brief, filed February 11, 2016;
- p. Petitioner's Reply Brief, filed March 3, 2016;
- q. Memorandum Decision and Order, filed April 6, 2016; and
- r. Judgment, filed April 6, 2016.

7. The Appellant requests that all of the exhibits included in the agency record be copied and sent to the Supreme Court.

8. I certify:

a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

i. Name and Address: Sabrina Vasquez, P.O. Box 2707, Twin Falls, Idaho 83303-2707.

b. That the Clerk of the District Court and the Idaho Department of Water Resources have been paid the estimated fee for preparation of the reporter's transcript.

c. That the estimated fee for preparation of the clerk's and agency's record has been paid.

- d. That the appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules and upon the Attorney General pursuant to Section 67-1401(1), Idaho Code.

Dated this 13<sup>th</sup> day of May, 2016.

*for* Robert L. Harris  
Garrett Sandow  
Attorney for the City of Blackfoot

Robert L. Harris  
Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.  
*Attorneys for the Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the following described pleading or document on the attorneys and/or individuals listed below, by the method indicated, a true and correct copy thereof on this 13<sup>th</sup> day of May, 2016.

**Document Served:** NOTICE OF APPEAL

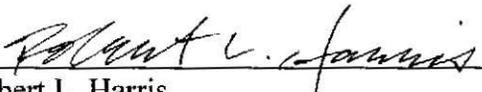
**Attorneys and/or Individuals Served:**

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