

RECEIVED

JAN 04 2013

DEPARTMENT OF  
WATER RESOURCES

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 Minidoka Irrigation District*

C. Tom Arkoosh, ISB #2253  
**ARKOOSH EIGUREN, PLLC**  
802 W. Bannock, 9<sup>th</sup> Floor  
P.O. Box 2900  
Boise, Idaho 83701  
Telephone: (208) 343-5105  
Facsimile: (208) 343-5456

*Attorneys for American Falls  
Reservoir District #2*

**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

**SURFACE WATER COALITION'S  
PETITION REQUESTING HEARING  
ON DIRECTOR'S ORDER DENYING  
PETITION FOR RECONSIDERATION**

**MOTION TO AUTHORIZE  
DISCOVERY**

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 hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through counsel of record, and hereby submit their *Petition Requesting Hearing on Order Denying Petition for Reconsideration / Motion to Authorize Discovery* pursuant to Idaho Code § 42-1701A(3) and the Department’s Rules of Procedure (IDAPA 37.01.01. *et seq.*).

### **INITIAL REASONS FOR PETITION**

On December 21, 2012, the Director issued an *Order Denying Petition for Reconsideration*. The Director refused to reconsider the *Final Order Establishing 2012 Reasonable Carryover (Methodology Step 9)* and the accounting for reasonable carryover held by AFRD #2 following the 2012 irrigation season. The Director’s decision relies upon an erroneous interpretation of water right #1-6 partially decreed by the SRBA Court in 2012. The issue concerning the meaning of water right #1-6, and its relationship to the storage water right in American Falls Reservoir in water right administration must be determined. The Coalition submits the initial issue as follows:

- 1) Whether water right #1-6 identifies water for storage in American Falls Reservoir under water right #1-2064 prior to and after the initial fill of the reservoir when the March 30, 1921 priority date is in priority?

### **MOTION TO AUTHORIZE DISCOVERY**

The SWC hereby moves for order authorizing discovery in this matter pursuant to Rule 521 of the Department’s Rules of Procedure. The SWC requests the opportunity to discover the factual basis and analysis performed by the Director in issuing the *Order Denying Petition for Reconsideration*.

## REQUEST FOR HEARING

The SWC, pursuant to Idaho Code § 42-1701A(3) and Rule 740.02.b of the Department's Rules of Procedure, hereby requests a hearing on the Director's *Order Denying Petition for Reconsideration*. The SWC reserves the right to amend this petition as necessary.

DATED this 4<sup>th</sup> day of January, 2013.

**BARKER ROSHOLT & SIMPSON LLP**

  
\_\_\_\_\_  
Travis L. Thompson


*Attorneys for A&B Irrigation District,  
Burley Irrigation District, Miler Irrigation  
District, North Side Canal Company, and  
Twin Falls Canal Company*

**FLETCHER LAW OFFICE**

  
\_\_\_\_\_  
W. Kent Fletcher

*Attorneys for Minidoka Irrigation  
District*

**ARKOOSH EIGUREN, PLLC**

  
\_\_\_\_\_  
C. Tom Arkoosh

*Attorneys for American Falls Reservoir District #2*

## CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of January, 2013, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition Requesting Hearing on Order Denying Petition for Reconsideration Motion to Authorize Discovery* on the following by the method indicated:

|   |  |   |
|---|--|---|
| <p>Interim Director Gary Spackman<br/>c/o Victoria Wigle<br/>State of Idaho<br/>Dept of Water Resources<br/>322 E Front St<br/>Boise ID 83720-0098<br/>*** service by electronic mail</p> <p>facsimile – 208-287-6700<br/><a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a><br/><a href="mailto:victoria.wigle@idwr.idaho.gov">victoria.wigle@idwr.idaho.gov</a></p> | <p>Matt Howard<br/>U.S. Bureau of Reclamation<br/>1150 N. Curtis Rd.<br/>Boise ID 83706-1234<br/>*** service by electronic mail only</p> <p><a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a><br/><a href="mailto:emcgarry@pn.usbr.gov">emcgarry@pn.usbr.gov</a></p>  | <p>IDWR – Eastern Region<br/>900 N. Skyline Dr., Suite A<br/>Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only<br/><a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></p>   |
| <p>Randy Budge<br/>Candice McHugh<br/>Racine Olson<br/>PO Box 1391<br/>Pocatello ID 83204-1391<br/>*** service by electronic mail only</p> <p><a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a><br/><a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a></p>   | <p>Sarah A. Klahn<br/>Mitra Pemberton<br/>White &amp; Jankowski, LLP<br/>511 Sixteenth Street, Suite 500<br/>Denver, CO 80202<br/>*** service by electronic mail only<br/>facsimile – 303-825-5632<br/><a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a><br/><a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a></p> | <p>David Gehlert<br/>ENRD – DOJ<br/>999 18<sup>th</sup> St.<br/>South Terrace, Suite 370<br/>Denver, CO 80202<br/>*** service by electronic mail only</p> <p><a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>   |
| <p>A. Dean Tranmer<br/>City of Pocatello<br/>PO Box 4169<br/>Pocatello ID 83201<br/>*** service by electronic mail only</p> <p>facsimile – 208-234-6297<br/><a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>  | <p>William A. Parsons<br/>Parsons, Smith &amp; Stone LLP<br/>P.O. Box 910<br/>Burley, ID 83318<br/>*** service by electronic mail only</p> <p><a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>   | <p>IDWR – Southern Region<br/>1341 Fillmore St., Suite 200<br/>Twin Falls, ID 83301-3380</p> <p>*** service by electronic mail only<br/><a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a><br/><a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></p> |
| <p>Michael C Creamer<br/>Jeffrey C. Fereday<br/>Givens Pursley<br/>601 W Bannock St Ste 200<br/>PO Box 2720<br/>Boise ID 83701-2720<br/>*** service by electronic mail only<br/><a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a><br/><a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>   | <p>Kathleen Carr<br/>US Dept Interior, Office of Solicitor<br/>Pacific Northwest Region, Boise<br/>960 Broadway Ste 400<br/>Boise ID 83706<br/>*** service by electronic mail only<br/>facsimile – 208-334-1918</p> <p><a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a></p>  |   |



Travis L. Thompson