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RECEIVED

SEP 15 2008

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Canal Company, Twin Falls
Canal Company*

FILED *11:30*
SEP 11 2008
[Signature]
Clerk of the District Court
Gooding Cou., Idaho

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

**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,**

Petitioners,

vs.

**DAVID K. TUTHILL, JR., in his capacity as
Director of the Idaho Department of Water
Resources, and THE IDAHO DEPARTMENT
OF WATER RESOURCES,**

)
) **CASE NO. CV 2008-000551**
)
)
) **Fee Category R.2 - \$88.00**
)
)
) **SURFACE WATER COALITION'S**
) **NOTICE OF APPEAL AND**
) **PETITION FOR JUDICIAL**
) **REVIEW OF AGENCY ACTION**
)
)
)
)
)

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, 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 files this Petition seeking judicial review of a final agency action. A Statement of Issues which the Coalition intends to assert in this matter will be filed with the Court within 14-days.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of a final order issued by the Director of the Idaho Department of Water Resources, David K. Tuthill, Jr., on September 5, 2008 (“*Final Order*”).
2. A hearing before the agency was held in the matter from January 16, 2008 to February 5, 2008.
3. A Statement of Issues which the Coalition intends to assert in this matter will be filed with the Court within 14-days. 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 in this petition or which become later discovered.

JURISDICTION AND VENUE

4. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.
5. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272.
6. Venue lies in this Court pursuant to Idaho Code § 67-5272. Petitioners, AFRD#2 and NSCC do business in Gooding County, Idaho and certain water rights, which are the subject of the agency action, are delivered to water users located in Gooding County
7. The Director's September 5, 2008, *Final Order Regarding the Surface Water Coalition Delivery Call* is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

8. Petitioner, A&B Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
9. Petitioner, AFRD#2 is duly organized under the laws of the State of Idaho and does business in Gooding County, Idaho.
10. Petitioner, Burley Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
11. Petitioner, Milner Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.
12. Petitioner, Minidoka Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

13. Petitioner, NSCC is a non-profit Idaho corporation organized under the laws of the State of Idaho and does business in Gooding County.

14. Petitioner, TFCC is a non-profit Idaho corporation organized under the laws of the State of Idaho.

15. Respondent, Idaho Department of Water Resources is a state agency, with its main office located at 322 E. Front St., Boise, Idaho. Respondent, David K. Tuhill, Jr., is the director of the Idaho Department of Water Resources.

AGENCY RECORD

16. Judicial review is sought of the Director's September 5, 2008 *Final Order Regarding the Surface Water Coalition Delivery Call*.

17. The Department held a hearing in this matter from January 16, 2008 to February 5, 2008, which was recorded and a transcript created, which transcript should be made a part of the agency record in this matter. The person who may have a copy of such transcript is Victoria Wigle, Director's Administrative Assistant, Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803, Facsimile: (208) 287-6700, email: victoria.wigle@idwr.idaho.gov.

18. 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.

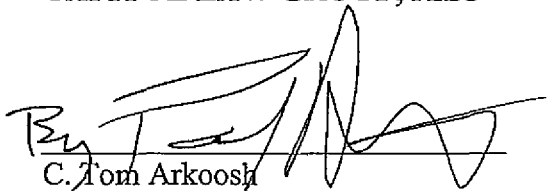
19. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

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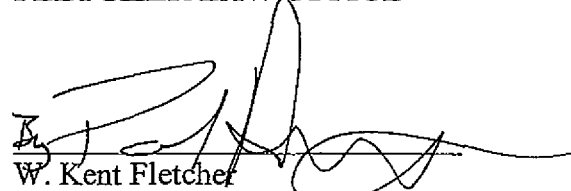
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DATED this 11 day of September, 2008.

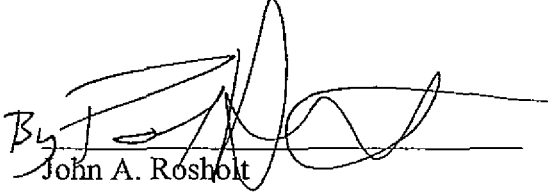
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Irrigation District, North Side
Canal Company, Twin Falls
Canal Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of September, 2008, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Agency Action* upon the following by the method indicated:

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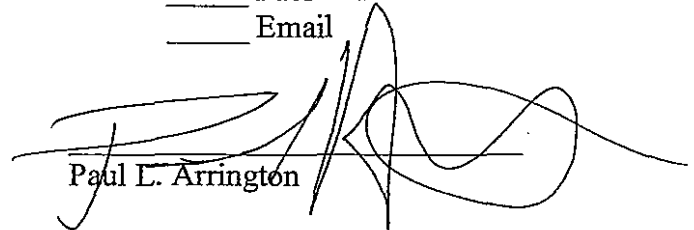
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