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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
2010 JUL -1 PM 3:18
BY _____
CLERK
DEPUTY

**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,)
Petitioners,)
vs.)
)**

CASE NO. CV -10-3079
Fee Category L.3 - \$88.00
**NOTICE OF APPEAL AND
PETITION FOR JUDICIAL
REVIEW OF FINAL AGENCY
ACTION**

GARY SPACKMAN, in his capacity as Interim)
Director of the Idaho Department of Water)
Resources, and THE IDAHO DEPARTMENT)
OF WATER RESOURCES,)

Respondents.)
_____))
_____)

IN THE MATTER OF THE IDAHO)
GROUND WATER APPROPRIATORS,)
INC.'S MITIGATION PLAN IN RESPONSE)
TO THE SURFACE WATER COALITION'S)
WATER DELIVERY CALL)
_____)

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 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 a final order issued by the Interim Director of the Idaho Department of Water Resources, Gary Spackman, on June 3, 2010.

2. A hearing before the agency was held in the matter on May 25-26, 2010.

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 §§ 42-1701A(4) and 67-5272.

5. Venue lies in this Court pursuant to Idaho Code § 67-5272 because Petitioner, TFCC does 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. The Director's June 3, 2010 *Order Approving Mitigation Plan* is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

7. Petitioner, A&B Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

8. Petitioner, AFRD#2 is a duly organized reservoir district under the laws of the State of Idaho.

9. Petitioner, Burley Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

10. Petitioner, Milner Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

11. Petitioner, Minidoka Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

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

13. Petitioner, TFCC is a non-profit Idaho corporation organized under the laws of the State of Idaho and conducting business in Twin Falls County.

14. Respondent, Idaho Department of Water Resources is a state agency with its main office located at 322 E. Front St., Boise, Idaho. Respondent, Gary Spackman, is the Interim Director of the Idaho Department of Water Resources.

STATEMENT OF INITIAL ISSUES

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

a. Whether the Director's *Order Approving Mitigation Plan* is supported by substantial evidence.

b. Whether the Director erred in finding that the Idaho Ground Water Appropriators, Inc. met their burden in seeking approval of a mitigation plan under Rule 43 of the Rules for the Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11 *et seq.*).

c. Whether the Director erred in failing to address the term of the mitigation plan.

d. Whether the standard "to the satisfaction of the Director" is any standard at all or instead is arbitrary and capricious in violation of Idaho.

e. Whether the Director erred by effectively rewriting the proposed mitigation plan to conform to the Director's unlawful "replacement water plan" contained in the *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)* issued on April 29, 2010.

16. 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

17. Judicial review is sought of the Director's June 3, 2010 *Order Approving Mitigation Plan*.

18. The Department held a hearing in this matter on May 25-26, 2010, 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.

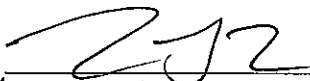
19. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

20. Service of this Petition for Judicial Review of Agency Action has been made on counsel for the Idaho Department of Water Resources and the Idaho Ground Water Appropriators, Inc. at the time of the filing of this Petition.

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DATED this 1st day of July, 2010.

CAPITOL LAW GROUP, PLLC



C. Tom Arkoosh

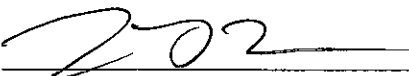
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Irrigation District, Milner Irrigation District,
North Side Canal Company, Twin Falls Canal
Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of July, 2010, 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:

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