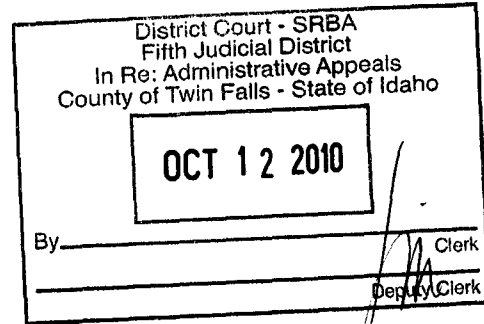


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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

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 NO. 2,
BURLEY IRRIGATION DISTRICT, and
MINIDOKA IRRIGATION DISTRICT;

Petitioners,

vs.

IDAHO GROUND WATER
APPROPRIATORS, INC.;

Petitioner,

vs.

Case No. CV-2010-0000382

Case No. CV-2010-0003075

**IDWR RESPONSE IN OPPOSITION TO
SWC'S JOINT MOTION FOR
CONSOLIDATION**

CITY OF POCA TELLO;

Petitioner

vs.

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 DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT NO. 2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

COME NOW Respondents, Gary Spackman, Interim Director, and the Idaho Department of Water Resources (collectively referred to herein as "Director" or "Department"), and respond to the Surface Water Coalition's ("SWC") *Joint Motions for Consolidation and for Expedited Hearing* ("Motion").

In its Motion, the SWC seeks to consolidate with this proceeding (review of the Director's Methodology and April Forecast Supply orders) with Case No. CV 2010-3075. Case No. CV 2010-3075 is the SWC's petition for judicial review of the Director's order approving the Idaho Ground Water Appropriators, Inc.'s ("IGWA") CM Rule 43 mitigation plan for the SWC. The Department disagrees and requests that the Court deny the Motion.

The Methodology Order established a protocol by which the Director would, pursuant to CM Rule 42, determine material injury to reasonable in-season demand and reasonable carryover. The April Forecast Supply Order applied the Methodology Order by forecasting material injury during the 2010 irrigation season.¹ For purposes of CV 2010-3075, the Methodology Order and the subsequent “as-applied” orders, establish IGWA’s volumetric mitigation obligation for material injury to reasonable in-season demand and reasonable carryover.

At issue in CV 2010-3075 is the Director’s decision to approve IGWA’s CM Rule 43 mitigation plan over protest by the SWC, not the volumetric inputs for material injury to reasonable in-season demand and reasonable carryover. *See SWC’s Notice of Appeal and Petition for Judicial Review of Final Agency Action, CV 2010-3075* (July 1, 2010). The Department agrees that there is some relation between the proceedings, however, the Department respectfully disagrees with the SWC that economy will be promoted through consolidation.

First, the SWC’s petition in CV 2010-3075 is an important matter of first impression. Economy will be best promoted if the parties focus their full attention on the bases of the Director’s decision to approve IGWA’s CM Rule 43 mitigation plan. Approval of the mitigation plan is an important issue that should not be inadvertently subsumed by the larger and more technical record in CV 2010-382.

Second, the agency record in CV 2010-3075 has been settled and a briefing schedule is in place. Oral argument is scheduled to occur on December 13, 2010 at 1:30 p.m. With the current schedule, this matter can be resolved prior to the 2011 irrigation season, thereby providing certainty to the parties.

¹ Similar to in-season projections, the Director will issue an order, on or before November 30, 2010 regarding material injury to reasonable carryover, if any. *See Methodology Order* at 37.

Based on the foregoing, the Department respectfully requests that the Court deny the SWC's Motion.

DATED this 12th day of October, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 12th day of October, 2010.

Document Served: **IDWR RESPONSE IN OPPOSITION TO SWC'S JOINT MOTION FOR CONSOLIDATION**

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