

C. Thomas Arkoosh, ISB #2253  
**CAPITOL LAW GROUP, PLLC**  
P.O. Box 32  
Gooding, Idaho 83330  
Telephone: (208) 934-8872  
Facsimile: (208) 934-8873

*Attorneys for American Falls Reservoir  
District #2*

John A. Rosholt, ISB #1037  
John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198  
**BARKER ROSHOLT & SIMPSON LLP**  
113 Main Avenue West, Suite 303  
P.O. Box 485  
Twin Falls, Idaho 83303-0485  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444

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

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED  
2010 JUL 21 PM 3:13  
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*

BY \_\_\_\_\_  
CLERK  
PS \_\_\_\_\_  
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 ) CASE NO. CV 10-3403  
IRRIGATION DISTRICT, AMERICAN )  
FALLS RESERVOIR DISTRICT#2, ) Fee Category L.3 - \$88.00  
BURLEY IRRIGATION DISTRICT, )  
MILNER IRRIGATION DISTRICT, and )  
MINIDOKA IRRIGATION DISTRICT, )  
Petitioners, ) NOTICE OF APPEAL AND  
 ) PETITION FOR JUDICIAL  
 ) REVIEW OF FINAL AGENCY  
 ) ACTION  
vs. )  
 ) (April 2010 Forecast Supply)

**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 #2,** )  
**BURLEY IRRIGATION DISTRICT,** )  
**MILNER IRRIGATION DISTRICT,** )  
**MINIDOKA IRRIGATION DISTRICT,** )  
**NORTH SIDE CANAL COMPANY, AND** )  
**TWIN FALLS CANAL COMPANY** )  
\_\_\_\_\_ )

COME 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 24, 2010.

2. A hearing before the agency was held in the matter on May 24 and 25, 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. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. The Coalition has attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

7. The Director's June 24, 2010 *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4); Order on Reconsideration ("Final Order")* 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 a duly organized reservoir district under the laws of the State of 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.

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

15. 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**

16. The Petitioners intend to assert the following issues on judicial review:
- a. Whether the Director's *Final Order* is supported by substantial evidence?
  - b. Whether the Director's *Final Order* complies with Idaho law and the CM Rules?
  - c. Whether the Director erred in establishing a "reasonable in-season demand" standard for determining the extent of material injury rather than giving the water right decree the presumptive weight required by *AFRD#2, et al. v. IDWR, et al.*, 143 Idaho 863 (2007)?

d. Whether the Director's methodology is unconstitutional and arbitrary and capricious where it establishes a mitigation obligation threshold early in the irrigation season (April) that may be adjusted downward based on precipitation and water use during that irrigation season but that cannot be adjusted upward regardless of the exigencies of the irrigation season demand?

e. Whether the establishment of a methodology that allows mitigation obligations to be adjusted downward based on precipitation and water use during the irrigation season but not upward based on the same criteria violates the Equal Protection Clause of the Constitution?

f. Whether the Director's actions taken as part of the *Final Order* are arbitrary and capricious by not following his prior administrative order (April 7, 2010 methodology order) for purposes of water right administration for the 2010 irrigation season?

g. Whether the Director's *Final Order* complies with the Gooding County District Court's *Order on Petition for Judicial Review* (Case No. 08-551) issued on July 24, 2009?

17. 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**

18. Judicial review is sought of the Director's June 24, 2010 *Final Order*.

19. The Department held a hearing in this matter on May 24 and 25, 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](mailto:victoria.wigle@idwr.idaho.gov).

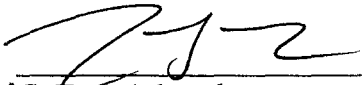
20. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

21. 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.

- >
- >
- >
- >
- >

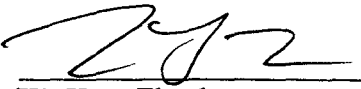
DATED this 21<sup>st</sup> day of July, 2010.

**CAPITOL LAW GROUP, PLLC**

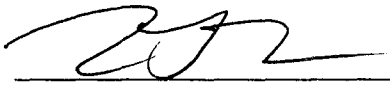
  
\_\_\_\_\_  
T.C. Tom Arkoosh

*Attorneys for American Falls Reservoir  
District #2*

**FLETCHER LAW OFFICE**

  
\_\_\_\_\_  
A.W. Kent Fletcher  
*Attorneys for Minidoka Irrigation District*

**BARKER ROSHOLT & SIMPSON LLP**

  
\_\_\_\_\_  
John A. Rosholt, ISB #1037  
John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> 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:

Twin Falls County Court  
425 Shoshone St. N.  
P.O. Box 126  
Twin Falls, ID 83303

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

*Courtesy Copy*  
Snake River Basin Adjudication  
427 Shoshone Street N.  
P.O. Box 126  
Twin Falls, ID 83303

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Garrick Baxter  
Chris Bromley  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098  
[garrick.gaxter@idwr.idaho.gov](mailto:garrick.gaxter@idwr.idaho.gov)  
[chris.bromley@idwr.idaho.gov](mailto:chris.bromley@idwr.idaho.gov)

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randy Budge  
Candice McHugh  
P.O. Box 1391  
Pocatello, Idaho 83204-1391

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Sarah Klahn  
William A. Hillhouse II  
Kelly Snodgrass  
511 16<sup>th</sup> St., Suite 500  
Denver, CO 80202

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Dean Tranmer  
City of Pocatello  
P.O. Box 4169  
Pocatello, Idaho 83205

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



Kathleen Carr  
U.S. Dept. of Interior  
960 Broadway Ste. 400  
Boise, Idaho 83706

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Matt Howard  
U.S. Bureau of Reclamation  
1150 N. Curtis Road  
Boise, Idaho 83706-1234

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Lyle Swank  
IDWR  
900 N .Skyline Dr.  
Idaho Falls, Idaho 83402-6105

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Allen Merritt  
Cindy Yenter  
IDWR  
1341 Fillmore St., Suite 200  
Twin Falls, Idaho 83301

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

William A. Parsons  
Parsons, Smith & Stone, LLP  
P.O. Box 910  
Burley, ID 83318

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Michael C. Creamer  
Jeffrey C. Fereday  
601 W. Bannock  
P.O. Box 2720  
Boise, Idaho 83701-2720

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

David W. Gehlert  
Natural Resources Section  
U.S. Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

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

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_.

RE: PETITIONS FOR JUDICIAL  
REVIEW OR ACTIONS FOR  
DECLARATORY RELIEF OF  
DECISIONS FROM THE IDAHO  
DEPARTMENT OF WATER  
RESOURCES

)  
)  
)  
)  
)  
)  
)

CASE NO. \_\_\_\_\_

NOTICE OF REASSIGNMENT

---

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said Order, and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.
2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho

83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

DATED this \_\_\_ day of \_\_\_\_\_, 2010.

CLERK OF THE DISTRICT COURT

By: \_\_\_\_\_  
Deputy Clerk