

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

NOV 17 2014

By _____ Clerk
 _____ Deputy Clerk

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

IDAHO GROUND WATER
 APPROPRIATORS, INC.,

Petitioner,

vs.

CITY OF POCA TELLO,

Petitioner,

vs.

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.

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

Respondents.

 IN THE MATTER OF DISTRIBUTION OF
 WATER TO VARIOUS WATER RIGHTS
 HELD BY OR FOR THE BENEFIT OF

) Case No.: CV-2010-382
)
) (consolidated Gooding County Cases
) CV-2010-382, CV-2010-383, CV-
) 2010-384, CV-2010-387, CV-2010-
) 388, Twin Falls County Cases CV-
) 2010-3403, CV-2010-5520, CV-2010-
) 5946, CV-2012-2096, CV-2013-2305,
) CV-2013-4417 and Lincoln County
) Case CV-2013-155)

**ORDER DENYING PETITIONS
 FOR REHEARING**

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)
 _____)
)

I.

BACKGROUND

1. On September 26, 2014, this Court entered a *Memorandum Decision and Order* and *Judgment* in the above-captioned matter.

2. On October 10, 2014, the 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 (collectively, “Surface Water Coalition”) filed a *Joint Petition for Rehearing*. The Surface Water Coalition subsequently filed a *Brief* in support of their *Joint Petition*.

3. On October 17, 2014, the Idaho Ground Water Appropriators, Inc. (“IGWA”) filed a *Petition for Rehearing*. IGWA subsequently filed a *Brief* in support of its *Petition*.

4. A hearing on both *Petitions* was held before this Court on November 13, 2014.

II.

ANALYSIS

Under Idaho Rule of Civil Procedure 84(r) and Idaho Appellate Rule 42 the decision to grant or deny the *Petitions for Rehearing* at issue here is left to the discretion of this Court. In this case, the Court in an exercise of its discretion, and for the reasons set forth herein, denies the *Petitions for Rehearing*.

With respect to the Surface Water Coalition’s *Joint Petition for Rehearing*, this Court disagrees that Section V.A.iv of its *Memorandum Decision* constitutes an advisory opinion. The Court finds that its Section V.A.iv analysis is part and parcel with its larger analysis addressing

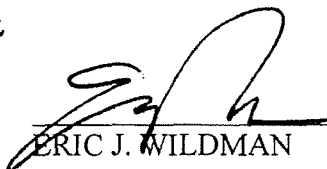
the legality of Step 8 of the Director's *Methodology Order*.¹ The Surface Water Coalition argued that Step 8 unlawfully provides for out-of-priority water use without remedy of curtailment or a properly enacted mitigation plan. This Court agreed. However, the Coalition's position was not unopposed. In conjunction with its overarching conclusion that step 8 does not comply with Idaho law, the Court, via the inclusion of Section V.A.iv, acknowledged some of the concerns and issues raised by the parties opposing the Coalition's position. Specifically, issues concerning difficulties associated with mid-season curtailments and with the ability of junior users to secure additional water mid-season to mitigate any increased injury to reasonable in-season demand. The Court finds that these issues were placed before the Court and argued by the parties in this judicial review proceeding. Therefore, the Surface Water Coalition's *Petition for Rehearing* is denied.

With respect to IGWA's *Petition for Rehearing*, the Court finds that the issues and arguments set forth therein rehash issues and arguments already raised by IGWA in this judicial review proceeding. The Court considered those issues and arguments in conjunction with the drafting and issuing of its *Memorandum Decision and Order*. Following its review of IGWA's *Petition*, the Court does not find reason or cause to revisit those issues and arguments on rehearing. Therefore, IGWA's *Petition for Rehearing* is denied.

III. ORDER

Therefore, IT IS ORDERED that the *Petitions for Rehearing* filed in the above-captioned matter **are hereby denied**.

Dated November 17, 2014


ERIC J. WILDMAN
District Judge

¹ The term "*Methodology Order*" refers to the Director's *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued on June 23, 2010.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING PETITIONS FOR REHEARING was mailed on November 17, 2014, with sufficient first-class postage to the following:

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