

BINGHAM

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Filed pursuant to
I.R.C.P. 5(e)(1)
May 12, 2010
at 4:35 p.m.
Eric W. Loman, Dist. J. dgt

IN THE SRBA DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ~~TWIN FALLS~~ ^{Minidoka Jerome}

IDAHO GROUND WATER
APPROPRIATORS, INC., ABERDEEN-
AMERICAN FALLS GROUND WATER
DISTRICT, and BINGHAM GROUND
WATER DISTRICT

Petitioners,

vs.

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

Respondents.

Case No. _____

PETITION FOR JUDICIAL REVIEW

Fee Category: R-2
Fee Amount: \$78.00

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.

Aburdeen-American Falls

IDAHO GROUND WATER APPROPRIATORS, INC., ~~MAGIC VALLEY~~ GROUND WATER DISTRICT, and ~~NORTH SNAKE~~ ^{Bingham} GROUND WATER DISTRICT, acting for and on behalf of their members, respectfully petition the Court for judicial review pursuant to Idaho Code §§ 67-5270 through 67-5279 and Rule 84 of the Idaho Rules of Civil Procedure.

PETITION FOR JUDICIAL REVIEW

1. This Petition requests judicial review of agency action taken by Gary Spackman (the "Director") in his official capacity as Interim Director of the Idaho Department of Water Resources ("IDWR").

2. This Petition is taken to the ~~SRBA District Court~~ of the Fifth Judicial District of the State of Idaho, in and for the County of ~~Franklin~~ ^{Blaine} Twin Falls. Venue is proper pursuant to the ~~Administrative Order~~ issued by the Supreme Court of the State of Idaho on December 9, 2009, appointing the ~~SRBA District Court~~ to hear all petitions for judicial review of agency actions taken by IDWR. *because a portion of lands contemplated to be curtailed, North Snake Valley Ground Water District is located in Twin Falls County*

3. This Petition seeks judicial review of the *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)* ("As-Applied Order") issued by the Director on April 29, 2010. The As-Applied Order is a preliminary, procedural, or intermediate agency action that is immediately reviewable pursuant to Idaho Code § 67-5271(2) because review of the final agency action will not provide an adequate remedy.

4. No hearing has been held before the Director or IDWR.

5. The Petitioners request judicial review of the following issues:

a. Whether the Director erred by calculating the water demand of the calling senior water users based solely on past headgate deliveries, without considering whether the seniors are currently irrigating the full number of acres authorized under their water rights.

b. Whether the Director erred by requiring junior-priority ground water users to supply more water as mitigation than would accrue to the calling senior water users from curtailment.

c. Whether the Director erred by requiring junior-priority ground water users to provide mitigation to American Falls Reservoir District No. 2 (AFRD2) or suffer curtailment, even though curtailment will not provide additional water to AFRD2.

d. Whether the Director erred by requiring junior-priority ground water users

to mitigate for evaporation from the Upper Snake River Basin reservoir system.

e. Whether the Director erred by enforcing the As-Applied Order before holding a hearing to consider legal and factual defenses to the Order.

The Petitioners reserve the right to assert other issues as allowed by Rule 84 of the Idaho Rules of Civil Procedure.

6. Since there has been no hearing, the Petitioners do not request a transcript.

7. The undersigned certifies that the Petitioners have paid to IDWR the estimated fee for the preparation of the record. The undersigned further certifies that she verbally notified legal counsel for the Director of this Petition, have served a digital copy of this Petition upon legal counsel for the Director by email, and have served a hard copy of this Petition on the Director by mail.

DATED this 12th day of May, 2010.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Candice M. McHugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2010, the above and foregoing document was served in the following manner:

<p>Gary Spackman, Interim Director Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 Fax: 208-287-6700 gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
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