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DISTRICT COURT
TWIN FALLS COUNTY, IDAHO
MAY 19 11 4:30
ES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

<p>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,</p> <p style="text-align: right;">Petitioners,</p> <p>vs.</p>	<p>)</p> <p>) CASE NO. CV <u>-10-5520</u></p> <p>)</p> <p>) Fee Category L.3 - \$88.00</p> <p>)</p> <p>) NOTICE OF APPEAL AND</p> <p>) PETITION FOR JUDICIAL</p> <p>) REVIEW OF FINAL AGENCY</p> <p>) ACTION</p> <p>)</p> <p>) (Methodology Step 7 Order)</p>
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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 September 17, 2010 (order denying request for reconsideration issued October 22, 2010).

2. No administrative hearing was held on this order.

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 September 17, 2010 *Final Order Revising April 2010 Forecast Supply (Methodology Steps 7)* (along with the October 22, 2010 *Order Denying Request for Reconsideration*, collectively "*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's actions taken as part of the *Final Order* are arbitrary and capricious by not following his prior administrative order for purposes of water right administration for the 2010 irrigation season?

d. 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 and the *Order on Petitions for Rehearing* issued on August 23, 2010?

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 September 17, 2010 *Final Order*.

19. No administrative hearing was held on the *Final Order*, therefore no transcript is available.

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.

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DATED this 19th day of November, 2010.

CAPITOL LAW GROUP, PLLC



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*Attorneys for American Falls Reservoir
District #2*


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Travis L. Thompson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of November, 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.
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P.O. Box 126
Twin Falls, Idaho 83303

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