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JUN 05 2013

DEPARTMENT OF  
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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**

<b>TWIN FALLS CANAL COMPANY, NORTH</b>	)	
<b>SIDE CANAL COMPANY, A&amp;B</b>	)	CASE NO. CV <u>13-2305</u>
<b>IRRIGATION DISTRICT, AMERICAN</b>	)	
<b>FALLS RESERVOIR DISTRICT #2,</b>	)	
<b>BURLEY IRRIGATION DISTRICT,</b>	)	Fee Category L.3 - \$96.00
<b>MILNER IRRIGATION DISTRICT, and</b>	)	
<b>MINIDOKA IRRIGATION DISTRICT,</b>	)	
	)	<b>NOTICE OF APPEAL AND</b>
Petitioners,	)	<b>PETITION FOR JUDICIAL</b>
	)	<b>REVIEW OF FINAL AGENCY</b>
vs.	)	<b>ACTION</b>
	)	
<b>GARY SPACKMAN, in his capacity as</b>	)	<b>(April 2013 Forecast Supply Order)</b>
<b>Director of the Idaho Department of Water</b>	)	
<b>Resources, and THE IDAHO DEPARTMENT</b>	)	
<b>OF WATER RESOURCES,</b>	)	
	)	

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 final orders issued by the Director of the Idaho Department of Water Resources, Gary Spackman, on April 17<sup>th</sup> and May 22<sup>nd</sup> 2013.
- 2. The Director refused to hold an administrative hearing and denied the Petitioners’ statutory right to a hearing provided by I.C. § 42-1701A(3).

**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 § 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 May 22, 2013 *Order Denying Petition for Reconsideration; Denying Request for Hearing; Denying Motion to Authorize Discovery (Methodology Steps 1 - 4)*("Final Order") is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

### **PARTIES**

8. Petitioner, American Falls Reservoir District #2 (AFRD #2), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Shoshone, Idaho. AFRD #2 delivers water to its landowners in Jerome, Lincoln, and Gooding Counties.

9. Petitioner, A&B Irrigation District (A&B), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Rupert, Idaho. A&B delivers water to its landowners in Jerome and Minidoka Counties.

10. Petitioner, Burley Irrigation District (BID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Burley, Idaho. BID delivers water to its landowners in Cassia County.

11. Petitioner, Milner Irrigation District (Milner), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Murtaugh, Idaho. Milner delivers water to its landowners in Cassia and Twin Falls Counties.

12. Petitioner, Minidoka Irrigation District (MID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Rupert, Idaho. MID delivers water to its landowners in Cassia and Minidoka Counties.

13. Petitioner, North Side Canal Company (“NSCC”), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Jerome, Idaho. NSCC delivers water to its shareholders in Jerome, Gooding, and Elmore Counties.

14. Petitioner, Twin Falls Canal Company (“TFCC”), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC §§ 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Twin Falls County. TFCC delivers water to its shareholders in Twin Falls County.

15. Respondent, Gary Spackman is the Director of the Idaho Department of Water Resources, and a resident of Ada County.

16. Respondent, Idaho Department of Water Resources (“Department”), is the executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701, *et seq.*, with its state office located at 322 E. Front St., Boise, Ada County, Idaho.

### **STATEMENT OF INITIAL ISSUES**

17. 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 application of his methodology in the *Final Order* violates Idaho law?

c. Whether the Director’s actions are arbitrary and capricious or otherwise not in accordance with the law?

d. Whether the Director’s denial of the Petitioners’ request for a hearing violates their constitutional right to due process and the statutory right to a hearing pursuant to I.C. § 42-1701A(3)?

18. 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**

19. Judicial review is sought of the Director’s May 22, 2013 *Final Order*.

20. The Department and Interim Director refused to hold an administrative hearing on the matter so no transcript of a hearing is available.

21. 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.

22. 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 4<sup>th</sup> day of June, 2013.

**ARKOOSH LAW OFFICES, PLLC**

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North Side Canal Company, Twin Falls Canal  
Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of June, 2013, 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, Idaho 83303

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*Courtesy Copy*  
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