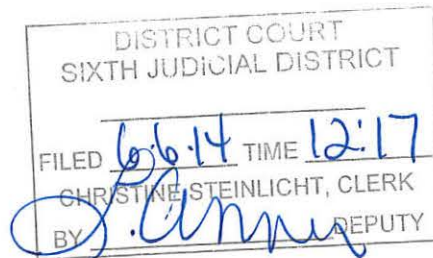


Randall C. Budge (ISB #: 1949)  
Carol Tippi Volyn (ISB#: 6371)  
RACINE, OLSON, NYE,  
BUDGE & BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208)232-6101  
Fax: (208)232-6109



*Attorneys for Plaintiffs*

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER

ABERDEEN-SPRINGFIELD CANAL  
COMPANY, an Idaho Corporation,  
JEFFREY and CHANA DUFFIN,  
individually, as stockholders, and as  
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES, an executive department  
of the State of Idaho,

Defendant.

Case No.

CV 2014-165

**COMPLAINT FOR DECLARATORY  
RELIEF**

**ASSIGNED TO  
JUDGE STEPHEN S. DUNN**

COME NOW Plaintiffs, Aberdeen-Springfield Canal Company as well as Jeffrey and Chana Duffin, by and through their counsel of record, Randall C. Budge of Racine, Olson, Nye, Budge & Bailey, Chartered, and for their Complaint for Declaratory Judgment against Defendant, state and allege as follows:

**COMPLAINT FOR DECLARATORY RELIEF-**

**Page 1**

## JURISDICTION AND VENUE

### I.

This action is brought pursuant to Idaho Code §10-1201 et seq. and Idaho Rule of Civil Procedure 57, for purposes of determining questions of actual controversy between the parties as hereinafter described.

### II.

Plaintiff, Aberdeen-Springfield Canal Company (hereafter “ASCC” or “Company”) is, and was at all times pertinent, a Carey Act corporation organized and existing under the laws of the State of Idaho.

### III.

Plaintiffs, Jeffrey and Chana Duffin (hereinafter “Duffin”), at all times pertinent were husband and wife, were residents of Power County, Idaho, and are stockholders in ASCC.

### IV.

Defendant, Idaho Department of Water Resources (hereafter “IDWR”) is, and was at all times pertinent, an executive department of the State of Idaho created for the purposes of section 20, article IV, of the constitution of the State of Idaho.

### V.

Venue is proper in Power County, State of Idaho, where Duffin resides and the subject real property is located and based on the facts set forth herein in compliance with I.C. §5-404. The amount in controversy exceeds the sum of \$10,000 and, therefore, jurisdiction is proper in the district court.

## GENERAL ALLEGATIONS

### VI.

ASCC provides irrigation water to its stockholders so that the stockholders can irrigate over 62,000 acres in Power and Bingham Counties in the State of Idaho. ASCC has decreed natural flow water rights in the Snake River and also storage water rights in Palisades and Jackson reservoirs. These water rights will be collectively referred to as "Project Water."

### VII.

ASCC owns and has operated for decades multiple recovery wells pursuant to I.C. §42-228 which are utilized to pump Project Water lost from the delivery system by seepage or otherwise during the course of delivery to shareholders. These recovery wells were all drilled pursuant to lawful drilling permits and do not have separate water rights as they deliver water owned by ASCC. These wells are used to either pump project water directly into canals and laterals for further delivery or directly to shareholders to achieve delivery efficiencies and maximize beneficial use.

### VIII.

In 2013 Duffin submitted an application to ASCC to transfer their well to the Company. The Company approved the application and since 2013 has operated the well as a "recovery well" pursuant to Idaho Code § 42-228, further directing Duffin to use the well as his point of diversion to take delivery of Project Water Duffin is entitled to based upon his shares appurtenant to his 175 acre parcel.

IX.

On or about May 1, 2014, IDWR sent Duffin a Notice of Violation No. E2014-498, a copy of which attached hereto as Exhibit “A”. The Notice of Violation challenged ASCC’s right to operate recovery wells, particularly the one serving Duffin’s property for irrigation purposes. The Notice of Violation alleged that Duffin was irrigating without a water right and directed him to cease and desist drawing water from the recovery well and pay civil penalties associated with their alleged unauthorized use of water in 2013 and 2014.

X.

On or about May 12, 2014, a response was sent on behalf of Duffin to IDWR to the Notice of Violation, a copy of which is attached hereto and as Exhibit “B”. As is shown, the response maintained that the well was duly authorized and operated under the authority and direction of ASCC as a “recovery well” pursuant to Idaho Code § 42-228 and that the water delivered Duffin for irrigation purposes was lawful.

XI.

A compliance conference was held by the Director of IDWR, as well as others from IDWR, on May 27, 2014 with legal counsel for Plaintiffs regarding the Notice of Violation sent to Plaintiffs Jeffrey and Chana Duffin. During said conference, IDWR maintained its position that Plaintiffs were illegally diverting water, while Plaintiffs maintained their position that the use of the recovery well to irrigate approximately 175 acres of Duffin’s property located in Section 20, Township 5 South, Range 31 was duly authorized by I.C. § 42-228.

As the parties were at an impasse at the end of the conference, IDWR proceeded to issue a Notice of Violation E2014-498; Cease and Desist Unauthorized Irrigation; Curtailment of



Groundwater Use by Water District 120 Watermaster to Plaintiffs Jeffrey and Chana Duffin on May 28, 2014. A copy of this Notice of Violation is attached hereto as Exhibit "C". The Notice of Violation threatened that the Water Master would curtail the use of the water from the well on June 9, 2014 by all methods authorized by Idaho Code § 42-607, including but not limited to installing locks to prevent Plaintiffs' use of the well.

XII.

An actual controversy of a justiciable nature exists between Plaintiffs and Defendant with regard to the interpretation of Idaho Code §42-228 and whether Plaintiffs use of the recovery well at issue is authorized by said statute.

XIII.

Idaho Code § 42-228 provides as follows:

42-228. DRILLING AND USE OF WELLS FOR DRAINAGE AND RECOVERY PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and, likewise, there shall be excepted from the provisions of this act, the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigations districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights for the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

IX.

By virtue of the substantive language of the foregoing statute and the statutory history, ASCC's use of the recovery well for delivery of irrigation water to shareholder Duffin's property

lawful, continues to be lawful, and said use should not be curtailed as threatened by IDWR.

XIV.

Neither Plaintiffs nor Defendant have sought to have their legal rights, duties and liabilities under the aforementioned statute adjudicated or determined in any other legal proceeding, and until the aforesaid controversy is judicially determined, as requested herein, the parties will be unable to ascertain and act upon their said rights, duties and liabilities arising therefrom.

XV.

Plaintiffs have been required to retain the services of legal counsel in order to bring this action for declaratory judgment, and are entitled to recover their reasonable attorney's fees and costs of suit incurred thereby, pursuant to the applicable provisions of Idaho law, including but not limited to Idaho Code §§10-1210 and 12-120.

WHEREFORE, Plaintiffs pray for declaratory judgment against Defendant as follows:

- A. That Plaintiffs use of the well which is the subject of the Notices of Violation alleged hereinabove is a duly authorized and lawful use pursuant to Idaho Code §42-228;
- B. That Defendant be precluded from taking any threatened or actual curtailment action preventing Plaintiffs' lawful use of the recovery well as such curtailment action would cause irreparable harm to Duffin's crops;
- C. That Plaintiffs have and recover from Defendant their costs and reasonable attorney's fees pursuant to applicable provisions of Idaho law; and,
- D. For such other and further relief as the Court may deem just and equitable under the circumstances.

DATED this 6<sup>th</sup> day of June, 2014.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By: Carl Leon Vof for:  
RANDALL C. BUDGE

## CERTIFICATE OF SERVICE

I certify that on this 6<sup>th</sup> day of June, 2014, the foregoing document was served on the following persons in the manner indicated.

 / 

Signature of person mailing form

<p>Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Attn: Deborah Gibson <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a> <a href="mailto:kimi.white@idwr.idaho.gov">kimi.white@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>James Cefalo Water Master 900 N. Skyline Dr, Ste. A Idaho Falls, Idaho 83402 <a href="mailto:james.cefalo@idwr.idaho.gov">james.cefalo@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>John Homan Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:john.homan@idwr.idaho.gov">john.homan@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>Chamber's Copy Honorable Stephen S. Dunn Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83205</p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail</p>



# **EXHIBIT “A”**





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

May 1, 2014

Jeffrey Duffin  
Chana Duffin  
PO Box 525  
Aberdeen, ID 83210

*CERTIFIED MAIL*

RE: Notice of Violation No. E2014-498  
**Order to Cease and Desist Unauthorized Irrigation**

Dear Mr. and Mrs. Duffin:

The purpose of this letter is to notify you that violations of State Law are hereby attributed to you by the Idaho Department of Water Resources ("Department"). This Notice of Violation ("NOV") is issued pursuant to Idaho Code §42-1701B. The violation(s) are associated with the unauthorized use of ground water to irrigate approximately 175 acres within the SE ¼ of the NE ¼ of Section 19, Township 5 South, Range 31 East and the NW ¼ of Section 20, Township 5 South, Range 31 East (map attached).

Department records reveal that the well located in the W ½ of the NW ¼ of Section 20 does not have a valid water right authorizing use. This well is included in the Department's Water Measurement Inventory System ("WMIS") which indicates that approximately 445 acre feet of water was diverted from the well in 2013. The Department concludes that during the 2013 irrigation season the above referenced well was used to irrigate approximately 175 acres without a valid water right.

In conversations with Department staff, you have expressed that irrigation from the well in 2013 was presumed to be authorized by and under the direction of the Aberdeen Springfield Canal Company ("ASCC") as an alternate point of delivery or designated "recovery well" within the ASCC service area.

A letter from the Department dated April 23, 2013 (enclosed), was sent to ASCC regarding their policy for designating and using existing wells as a means of diverting or recovering ASCC water. This correspondence warned that use of an existing well as advised by ASCC could subject the operator to an enforcement action for the unauthorized diversion of water under Idaho Code §42-351.

The violation(s) of Title 42, Idaho Code attributed to you is specifically listed below:

Page 1 of 2 NOV # E2014-498

- 1) Idaho Code §42-351(1) – Diversion and use of water without having obtained a valid water right.

As authorized by Idaho Code §42-351, and in accordance with Idaho Code §42-1701B, the Idaho Department of Water Resources requires the following redress and payment of civil penalties associated with the violation(s)

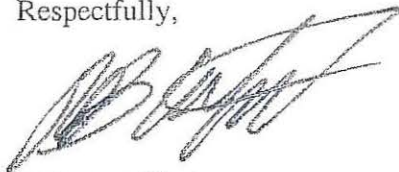
- 1) Cease and desist the irrigation of lands not covered by an appurtenant water right or authorized by an approved water supply bank rental agreement.
- 2) Payment of a civil penalty of \$300 per acre for the unauthorized irrigation of 175 acres in 2013, totaling fifty two thousand five hundred dollars (\$52,500) on or before June 15, 2014.

Failure to comply with the requirements of this NOV may be cause for the Department to initiate a civil action through the Attorney General in district court.

Any objections you may have to the provisions of this NOV may be presented at a compliance conference. A compliance conference must be requested within 14 days of receiving this notice. The recipient of a NOV will be provided an opportunity to address the alleged violation(s) and present a plan to assure future compliance. Any agreement reached between the Department and the recipient of the NOV will be formalized through a Consent Order and Agreement.

Please contact me at (208) 287-4924 if you have questions or to schedule a compliance conference.

Respectfully,



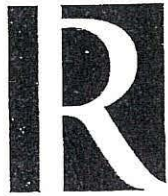
Robert B. Whitney  
Water Compliance Bureau

cc: James Cefalo - IDWR, Eastern Region  
John Homan - Office of the Attorney General, Boise  
Steve Houser - ASCC Manager



# **EXHIBIT “B”**





RACINE  
OLSON  
NYE  
BUDGE  
BAILEY

201 E. Center St.  
P.O. Box 1391  
Pocatello, ID 83204  
O 208.232.6101  
F 208.232.6109  
racinelaw.net

Randall C. Budge  
rcb@racinelaw.net

May 12, 2014

Robert B. Whitney  
Water Compliance Bureau  
IDWR  
P.O. Box 83720  
Boise, Idaho 83720-0098

**Re: Notice of Violation No. E2014-498**  
**Dated May 1, 2014 Re: Jeffrey Duffin**

Dear Mr. Whitney,

This will respond to your May 1, 2014 letter to Jeffrey and Chana Duffin regarding the above referenced matter. Please be advised that all of the Duffin land which is the subject of the Notice of Violation is within the service area of the Aberdeen Springfield Canal Company and covered by shares of stock owned by the Duffins.

The well was authorized by and operated under the authority and direction of Aberdeen Springfield Canal Company as a "recovery well" pursuant to Idaho Code section 42-228. Accordingly, the water diverted for irrigation purposes was lawfully diverted and delivered as project water of Aberdeen Springfield Canal Company. This well has been transferred to the Canal Company and is owned and operated by them. Mr. Duffin intends to continue to irrigate this property this year based upon his shares in the Canal Company and using the Company's existing recovery well.

Based on the foregoing, the irrigation was authorized and there is no lawful basis for the NOV or proposed penalty. Accordingly, Duffins hereby request a compliance conference to address the alleged violation. Please contact me and my Assistant Tessa Sparrow to schedule a convenient time and place for this purpose.

If you have any questions please feel free to contact me.

Sincerely,



RANDALL C. BUDGE



# **EXHIBIT “C”**





State of Idaho

**DEPARTMENT OF WATER RESOURCES**

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

May 28, 2014

Jeffrey & Chana Duffin  
PO Box 525  
Aberdeen, ID 83210

Aberdeen Springfield Canal Company  
144 South Main  
PO Box 857  
Aberdeen, ID 83210

**Re: Notice of Violation No. E2014-498; Notice to Cease and Desist Unauthorized Irrigation;  
Curtailment of Ground Water Use by Water District 120 Watermaster**

Dear Gentlemen,

On May 27, 2014, representatives of the Idaho Department of Water Resources ("IDWR" or "Department") held a compliance conference with attorney Randall Budge regarding the above referenced Notice of Violation ("NOV") that the Department sent to Jeffrey and Chana Duffin ("Duffin") on May 1, 2014. Mr. Budge had requested the compliance conference via correspondence to IDWR dated May 12, 2014. The Department understands Mr. Budge represents both Duffin and the Aberdeen-Springfield Canal Company ("ASCC").

The NOV addressed the unauthorized irrigation of about 175 acres in 2013 using a ground water well located in the SWNWNW of Section 20, Township 5 South, Range 31 East. The Water District 120 watermaster recently confirmed that this well is currently being used to irrigate the approximate 175 acres described in the NOV and owned by Duffin. Mr. Budge acknowledged that the well is being used in 2014 to irrigate Duffin's land but maintains that the well is owned and operated by the ASCC as a recovery well pursuant to Idaho Code § 42-228. The Department was not able to resolve with Mr. Budge the 2013 violation or the on-going 2014 violation.

**This letter provides formal notice that you immediately cease and desist the unauthorized use of ground water to irrigate the Duffin's land described in the NOV. If you do not cease and desist the diversion of water from the well described herein, the Water District 120 watermaster will curtail the unauthorized use of water from the well on June 9, 2014. The watermaster may install locks or take other similar and necessary actions to prevent any further illegal diversion of water and irrigation as authorized by Idaho Code § 42-607.**

The Water District 120 watermaster, James Cefalo, may be contacted directly at 208-525-7161, regarding questions about the potential scheduled curtailment of water from the well. Mr. Cefalo may contact you in advance of June 9<sup>th</sup> to make arrangements to shut off the well if necessary.

Sincerely,

Tim Luke  
Water Compliance Bureau Chief

Cc: James Cefalo, Water District 120 Watermaster  
Randal C. Budge, Attorney



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.