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**DISTRICT COURT OF THE STATE OF IDAHO
SIXTH JUDICIAL DISTRICT
POWER COUNTY**

ABERDEEN-SPRINGFIELD
CANAL COMPANY, an Idaho
Corporation; and 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,

and

A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MINLER
IRRIGATION DISTRICT,
MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, and TWIN FALLS
CANAL COMPANY,

Case No. CV-2014-165

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO IDWR
AND SWC MOTIONS FOR
SUMMARY JUDGMENT**

Plaintiffs, Aberdeen-Springfield Canal Company (“ASCC”) and Jeffrey and Chana Duffin (“Duffins”), by and through their counsel, Randall C. Budge of Racine, Olson, Nye, Budge & Bailey, Chartered, submit this response in opposition to *IDWR’s Motion and Memorandum in Support of Summary Judgment*, *Surface Water Coalition’s Motion for Summary Judgment*, and *Memorandum in Support of Surface Water Coalition’s Motion for Summary Judgment* filed March 4, 2015.

The Idaho Department of Water Resources (IDWR) and Surface Water Coalition (SWC) motions are cross-motions for summary judgment in response to *Plaintiffs’ Motion for Summary Judgment* filed July 17, 2014. At issue is ASCC’s right under I.C. § 42-228 to operate a recovery well on Duffins’ property as well as ASCC’s seven other existing recovery wells.

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I. STATEMENT OF FACTS

Plaintiffs set forth the factual background in their *Memorandum in Support of Plaintiffs' Motion for Summary Judgment* filed on July 15, 2014, which are incorporated herein by reference.¹ Notably, IDWR and the SWC do not dispute certain important facts:

- Over the past 100 years, ASCC has meticulously measured and documented its diversions from the Snake River, deliveries to stockholders, return spills to the Snake River, and transmission loss.²
- From 1989 to 2013, ASCC's average transmission loss was 181,624 acre feet (57% of total diversion).³
- Loss from ASCC's canal system substantially increases the elevation of the groundwater table beneath its service area, with a "mound" of water forming during the irrigation season.⁴
- ASCC utilizes wells to recover a small fraction of the water that leaks into the Eastern Snake Plane Aquifer (ESPA) underneath ASCC's service area.⁵

Under these undisputed facts, I.C. § 42-228 entitles ASCC to operate wells to recover water lost through its irrigation delivery system and to deliver this water to lands which have ASCC shares appurtenant.

II. SUMMARY JUDGMENT STANDARD

The legal standard for summary judgment is set forth in Plaintiffs' *Memorandum in Support of Plaintiffs' Motion for Summary Judgment*.⁶ The

¹ *Mem. in Supp. of Pls.' Mot. for Summ. J.* at 1-8, July 15, 2015.

² *Corrected First Aff. of Steve Howser* ¶ 4, Nov. 18, 2014; *Corrected Second Aff. of Steve Howser* ¶ 11, Nov. 18, 2014.

³ *Corrected Second Aff. of Steve Howser* ¶ 11.

⁴ *Id.* ¶ 14.

⁵ *Id.* ¶ 11.

⁶ *Mem. in Supp. of Pls.' Mot. for Summ. J.* at 9.

standard is not affected by the fact that IDWR and the SWC have filed cross-motions for summary judgment. Rather, “each motion must be separately considered on its own merits, with the court drawing all reasonable inferences against the party whose motion is under consideration.”⁷ It should be noted, however, that “[w]hen an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing the motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from *uncontroverted* evidentiary fact.”⁸

III. ARGUMENT

The plain language of I.C. § 42-228 authorizes ASCC to use wells to recover water that seeps into the aquifer from its canal system. It states:

DRILLING AND USE OF WELLS FOR DRAINAGE OR RECOVERY PURPOSES EXCEPTED. . . . [T]here shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation 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 of 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, I.C..⁹

As explained in Plaintiffs’ *Memorandum in Support of Plaintiffs’ Motion for Summary Judgment*,¹⁰ “[t]he objective in interpreting a . . . statute . . . is

⁷ *Treasure Valley Gastroenterology Specialists, P.A. v. Woods*, 135 Idaho 485, 489 (Ct. App. 2001).

⁸ *Read v. Harvey*, 141 Idaho 497, 499 (2005) (emphasis in original).

⁹ I.C. § 42-228.

¹⁰ ASCC will not repeat the law contained therein regarding interpreting statutes, but will only highlight the key principles. See *Mem. in Supp. of Pls.’ Mot. for Summ. J.* at 10-11.

to derive the intent of the legislative body that adopted the act”¹¹ and then “give effect to that intent.”¹² “Where the meaning of a statute is clear, [courts] are confined to follow that meaning and neither add to nor take away by judicial construction.”¹³ However, “[c]onstrutions of a statute that would lead to absurd or unreasonably harsh results are disfavored.”¹⁴

The legislative purpose of I.C. § 42-228 is clear: to allow canal companies like ASCC to use wells to recover water that leaks out of their canals. The Duffin well is used by ASCC specifically for this purpose. Yet IDWR and SWC contend the statute does not allow ASCC to use the Duffin well to recover ASCC water. Specifically, they contend:

- I.C. §42-228 does not allow ASCC to recover irrigation water that leaks out of its canals; it only allows recovery of irrigation water that leaks through cultivated fields.
- I.C. § 42-228 does not allow ASCC to recover water that enters the aquifer beneath ASCC canals.
- I.C. § 42-228 prohibits ASCC from using existing wells to recover its water.
- I.C. § 42-228 requires ASCC to obtain a well drilling permit for recovery wells.
- I.C. § 42-228 only allows water diverted from a recovery well to be used on lands to which ASCC is incapable of delivering surface water.

These arguments are based on an unreasonable reading of I.C. § 42-228 that inserts requirements not found in the statute.

¹¹ *Albee v. Judy*, 136 Idaho 226, 230 (2001).

¹² *In re Doe*, 139 Idaho 1, 2 (Idaho App. 2003); see also I.C. § 73-113(1)

¹³ *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First Nat’l Bank*, 117 Idaho 29, 31 (Idaho 1989).

¹⁴ *State v. Yager*, 139 Idaho 680, 690 (Idaho 2004).

To be sure, neither IDWR nor the SWC like I.C. § 42-228. But that does not give IDWR the right to evade operation of the statute by imposing an interpretation of it that undermines the Legislature’s clear intent. For the reasons explained below, this Court should accept Plaintiffs’ interpretation of I.C. § 42-228, deny Defendants’ motions for summary judgment, and grant Plaintiffs’ motion for summary judgment.

A. I.C. § 42-228 permits ASCC to recover irrigation water that leaks from its canals and ditches.

IDWR claims ASCC cannot recover water that seeps into the aquifer from its irrigation canal system on the basis such water does not “result[] from irrigation.”¹⁵ It argues that I.C. § 42-228 “anticipates that the water be initially applied to the land for irrigation and subsequently recaptured for use again.”¹⁶

This argument requires a strained, unreasonable interpretation of the phrase “resulting from irrigation.” Irrigation does not begin and end at the sprinkler head, but includes the process of delivering water from the source to the farm field. Water that seeps into the ground from irrigation canals and ditches is a direct result of irrigation. Thus, the phrase “resulting from irrigation” must be read to include water that seeps from ASCC’s canals and ditches.

IDWR’s argument is also contrary to the express language of I.C. §42-228 which provides for recovery of water “resulting from irrigation *under . . . irrigation works.*”¹⁷ While Idaho Code does not specifically define “irrigation works,” the term is used in the Code to describe irrigation water

¹⁵ IDWR’s Mot. & Mem. in Supp. of Summ. J. at 7.

¹⁶ *Id.*

¹⁷ I.C. § 42-228.

delivery systems, as in “ditches, canals or *other* irrigation works,”¹⁸ and “canal or irrigation works for the distribution of water.”¹⁹ Under the plain language of I.C. § 42-228, water lost under ASCC’s “irrigation works” means seepage from its canals, laterals, and other conveyance facilities.

To conclude otherwise would render I.C. § 42-228 meaningless to canal companies—an express beneficiary of the statute. The purpose of a canal company is not to irrigate land itself but rather deliver water to shareholders who in turn directly irrigate individual parcels of land. Under IDWR’s interpretation, canal companies cannot avail themselves of I.C. § 42-228 since they do not directly apply water for irrigation, despite being named beneficiaries under the statute.

Moreover, IDWR has issued drilling permits to canal companies to enable them to recover water seeping from their canals and ditches.²⁰ Thus, the argument that water can only be recovered after being applied to farm fields is contradicted by IDWR’s own practice.

Therefore, Plaintiffs respectfully ask this Court to deny IDWR’s argument that I.C. § 42-228 allows ASCC to recover only water that leaks into the ground after being applied to farm fields.

B. I.C. § 42-228 permits ASCC to recover ground water whether or not it comingles with the aquifer.

IDWR contends that “once water is comingled with a public source, it is no longer subject to recovery by the original appropriator.”²¹ While this may be true generally, it is not true with respect to recovery wells operated under I.C. § 42-228, for the following reasons.

¹⁸ I.C. § 42-2003 (emphasis added).

¹⁹ I.C. § 42-912.

²⁰ See, e.g., *Affidavit of Randall C. Budge*, at Ex. B.

²¹ *IDWR’s Mot. & Memo. in Supp. of Summ. J.* at 5.

1. The plain language of I.C. § 42-228 does not preclude ASCC from recovering ground water after it enters an aquifer.

I.C. § 42-288 allows use of wells to “recover[] ground water resulting from irrigation.” It imposes no limitation based on whether the water being recovered has seeped into an aquifer.

IDWR characterizes ASCC’s use of the Duffin well as a “free pass into the public aquifer,”²² but IDWR cannot point to any language in I.C. § 42-228 that limits recovery of ground water to only water that has not reached an aquifer. The statute also does not limit recovery to “perched aquifers or confining layers,” as IDWR suggests.²³ Under its plain language, 42-228 authorizes ASCC to recover any water seeping into the ground, regardless of whether the ground water is confined or comingled with an aquifer. The only “pass” I.C. § 42-228 gives to ASCC is to recover its water.

IDWR does not have authority to write into I.C. § 42-228 requirements that do not exist.

2. IDWR’s position contradicts the statutory definition of “ground water.”

IDWR’s attempt to distinguish between ground water that mingles with an aquifer and ground water that does not contradicts I.C. § 42-230(a) which defines “ground water” as “all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.”²⁴ By permitting ASCC to recover “ground water,” I.C. § 42-228 allows ASCC to recover any of its water beneath ground surface.

The fact that I.C. § 42-228 does not preclude ASCC from recovering water that enters the aquifer also debunks IDWR’s claim that I.C. § 42-228

²² *IDWR’s Mot. & Mem. in Supp. of Summ. J.* at 10.

²³ *Id.* at 9.

²⁴ Emphasis added.

“implicitly requires that the hydrologic conditions of the area be considered before drilling a well” so that “only surface water seepage is pumped by the well and not water from the public ground water supply.”²⁵

I.C. § 42-228 only requires is that ASCC recover “ground water resulting from irrigation under such irrigation works.” The gravamen is not whether it has entered an aquifer, but whether it results from ASCC irrigation.

3. I.C. § 42-228 supersedes the common law rule that water cannot be recovered once it enters a natural waterway.

IDWR relies on the common law rule that once water is comingled with another source it is no longer subject to use by the original appropriator, citing the 1927 decision *Sebern v. Moore* along with an SRBA decision stating that once “water returns to, and is commingled with, a natural stream or aquifer . . . [,] [t]he water is then considered ‘return flow’ and is subject to appropriation by third parties.”²⁶ Both decisions, however, interpret statutes that do not apply to recovery wells, since I.C. § 42-228 “exempt[s] [recovery wells] from the provisions of this act.”

Furthermore, the Legislature has authority to abrogate the common law rule, and has done so elsewhere. I.C. § 42-105 expressly authorizes the reclamation of water after it enters the public water supply:

The water that a person is entitled to divert by reason of a valid water right *may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed*, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished,

²⁵ IDWR’s Mot. & Mem. in Supp. of Summ. J. at 9.

²⁶ IDWR’s Mot. and Memo. in Supp. of Summ. J. at 7-8 (citing *Sebern v. Moore*, 44 Idaho 410, 418 (Idaho 1927) and *Order on Challenge, In Re SRBA Case No. 39576, Subcase 36-02080 et al*, at 16 (Apr. 25, 2003)).

and due allowance shall be made for loss by evaporation and seepage.

Likewise, I.C. § 42-228 authorizes the reclamation of water after it enters the public water supply. It is a proper exercise of legislative power, which IDWR is not free to evade.

4. The incidental recharge statute is not controlling.

IDWR contends that I.C. §42-234(5) prohibits ASCC from recovering water after it enters the ESPA on the basis that “incidental recharge may not be used as the basis for claim of a separate or expanded water right.”²⁷ This argument is misplaced for three reasons.

First, I.C. § 42-234(5) is inapplicable since recovery wells under I.C. § 42-228 are not governed by the Ground Water Act. Second, ASCC is not using its recovery wells “as the basis for claim of a separate or expanded water right;” it is recovering water diverted under an existing right. Third, to the extent there is any conflict between the statutes, the more specific terms of 42-228 control.

5. IDWR’s position contradicts its practice.

IDWR has already issued a drilling permit to ASCC to recover water that enters the aquifer underlying its canal system. Conditions 12 and 13 of Drilling Permit #869326 state:

12) The well will be used for the sole purpose of recovering water that seeps into the shallow aquifer as a result of irrigation water deliveries by Aberdeen-Springfield Canal Company in their ‘J’ Lateral canal as indicated in application for drilling permit attachment Figure 2.

13) The applicant will be required to measure all water diverted into and out of ‘J’ Lateral canal on a daily basis during the irrigation season. At no time can the in-season cumulative

²⁷ IDWR’s Mot. & Mem. in Supp. of Summ. J. at 5, 7-8.

ground water diversions from the recovery well exceed the in-season cumulative seepage losses from the ‘J’ Lateral canal, along its entirety. Seepage losses will be defined as the 24-hour volume of water diverted into the ‘J’ Lateral canal at the head gate less the combined 24-hour volume of water from all irrigational diversions from the ‘J’ Lateral canal.²⁸

For all of these reasons, Plaintiffs respectfully ask this Court to deny IDWR’s argument that I.C. § 42-228 prohibits ASCC from recovering water that enters the aquifer.

C. The claim that ASCC must physically drill recovery wells is unreasonable and leads to absurd results.

IDWR and the SWC both contend that I.C. § 42-228 allows ASCC to recover only water that can be withdrawn from wells ASCC physically drills; i.e. that ASCC cannot use existing wells to recover water lost from its canal system.²⁹

The IDWR and SWC argument is two-fold. First, they say that “excavation and opening of wells and withdrawal of water therefrom by canal companies . . .” means ASCC must personally drill any well it wishes to use to recover water. Second, they contend the “sole purpose” language means the well must have been originally drilled for the purpose of recovering water. Both arguments produce unreasonable results that undermine the clear legislative purpose of I.C. § 42-228.

1. I.C. § 42-228 cannot reasonably be construed to require ASCC to personally drill wells it uses to recover water.

IDWR and the SWC wish to create a barrier by limiting the recovery of water under I.C. § 42-228 to wells ASCC personally drills. Under their interpretation, ASCC could drill a well identical to the Duffin well only a

²⁸ *Affidavit of Randall C. Budge, Ex. B.*

²⁹ *IDWR’s Mot. & Mem. in Supp. of Summ. J.* at 7 (quoting I.C. § 42-228).

few feet away and use it to recover water, but ASCC cannot simply acquire the Duffin well and utilize it for the sole purpose of recovering water. This is absurd.

Although the Legislature may not have explicitly addressed scenarios where wells used for other purposes might be later converted to recovery wells, it patently contradicts the legislative purpose of I.C. § 42-228 to impose upon its beneficiaries a burden to drill new wells when an existing well could be acquired to serve the same purpose. The unnecessary construction and waste that would be required under this interpretation demonstrates its unreasonableness.

2. I.C. § 42-228 requires wells be used for the sole purpose of recovering water.

The “sole purpose” phrase in the statement, “for the sole purpose of recovering ground water resulting from irrigation,” can be interpreted to mean either: (a) the irrigation entity cannot use a well to recover water unless the well was constructed for the sole purpose of recovering water, or (b) wells used to recover water cannot be used for any purpose other than recovering water.

IDWR and the SWC advocate for interpretation (a), but this is unreasonable. Under this interpretation, as long as the well was originally constructed for the sole purpose of recovering water, it can later be used for other purposes in addition to recovering water. This interpretation elevates the purpose for which the well is drilled over the purpose for which it is actually used.

A more reasonable interpretation is that the “sole purpose” phrase refers to how the well is actually used: i.e. the “excavation and opening of wells and withdrawal of water therefrom” is not “forbidden or governed by this act” so long as the well is used “for the sole purpose of recovering

ground water resulting from irrigation.”³⁰ The “sole purpose” language merely explains that wells used for this unique purpose are excepted from normal statutory requirements. This language is not intended to disqualify wells that were initially constructed for a different purpose, provided their current use is solely to recover ASCC water.

Therefore, Plaintiffs respectfully ask the Court to deny Defendants’ assertion that I.C. § 42-228 allows ASCC to recover water only from wells it physically drills.

D. IDWR’s and the SWC’s ownership argument is also unreasonable.

IDWR and the SWC also seek to impose a hyper-technical water right ownership restriction on recovery wells, with the SWC claiming that I.C. § 42-228 requires “unity of ownership between the water rights and the individual/entity drilling the well”³¹ and IDWR claiming that “[o]nly ASCC has water rights appurtenant to the Duffin property” and, therefore, “only ASCC can drill and operate a recovery well on Duffin’s property.”³²

These arguments are predicated on the mistaken argument that ASCC must personally drill wells used to recover its water.

Moreover, both ASCC and Duffins have ownership to the water rights appurtenant to the Duffin property. In *United States v. Pioneer Irrigation District (In re SRBA Case No. 3957)*, 144 Idaho 106, 108 (Idaho 2007), the Idaho Supreme Court explained:

In Idaho the appropriator must apply the water to a beneficial use in order to have a valid water right The [irrigation] districts act on behalf of the landowners within the [irrigation]

³⁰ I.C. § 42-228.

³¹ [SWC’s] *Mem. in Supp. of Mot. for Summ. J.* at 11.

³² *IDWR’s Mot. and Mem. in Supp. of Mot. for Summ. J.* at 7.

districts to put the water to beneficial use. It is that beneficial that determines water right ownership.³³

Consequently, the Court concluded: “[A]s a matter of Idaho constitutional and statutory law *title* to the use of the water is held by the consumers or users of the water.”³⁴

It is undisputed that Duffins own a share of ASCC water rights represented by stock in ASCC.³⁵ Even if ASCC is the owner of nominal legal title to the water rights pertaining to its area of service, the Duffins hold “title to the use of the water” since they are the consumers and users of the water.³⁶ Certainly such ownership—in addition to their contractual ownership as shareholders—suffices for purposes of I.C. § 42-228.

Again, the clear purpose of I.C. § 42-228 is to enable ASCC to recover water lost from its “irrigation works” for “further use on . . . lands to which the established water rights . . . are appurtenant.” IDWR’s and the SWC’s “unity of ownership” argument, if accepted, would force the construction of unnecessary, duplicate wells several feet from identical, unused wells; creating a barrier that the Legislature clearly did not intend.

This Court should not accept IDWR’s and SWC’s ownership arguments because they are unreasonable and undermine the legislative intent of I.C. § 42-228.

³³ *United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 113 (Idaho 2007).

³⁴ *Id.* at 115 (emphasis added).

³⁵ *Corrected Aff. of Jeffrey Duffin* ¶ 1.

³⁶ *Pioneer Irrigation*, 144 Idaho at 115.

E. I.C. § 42-228 does not limit the recovery of water to wells for which IDWR has issued a permit for that particular purpose.

SWC argues that because the Duffin well was not drilled pursuant to a well drilling permit issued by IDWR, it cannot be a recovery well.³⁷ This argument is mistaken for four reasons.

First, it assumes ASCC can only recover water from wells that were originally drilled for that purpose, which, as explained above, is an incorrect interpretation of I.C. § 42-228.

Second, I.C. § 42-228 does not require that recovery wells be permitted as such; it simply requires compliance with “the licensing provisions of section 42-238, Idaho Code.” The licensing provisions are designed “to protect the ground water resources against waste and contamination,” by restricting well-drilling to licensed drillers who have the knowledge and experience required under Idaho Code § 42-238.

Third, the licensing language was not added until 1970,³⁸ and the Duffin well may have been drilled previously.³⁹

Fourth, it would be an unreasonable reading of I.C. § 42-228 to require a party to forego using a pre-existing well that is perfectly suitable for the purpose of recovering water and construct a new well simply to engage in the permit process.

Therefore, Plaintiffs respectfully ask the Court to deny Defendants’ argument that the Duffin well cannot be used to recover water.

³⁷ *Mem. in Supp. of Surface Water Coalition’s Mot. for Summ. J.* at 13.

³⁸ 1970 Idaho Session Laws, ch. 187, § 2, p. 542.

³⁹ *Duffin Depo.* at 11:18-25.

F. I.C. § 42-228 imposes no restriction on water recovery based on ASCC's ability to deliver surface water.

Finally, the SWC argues that the Duffin well cannot be used to recover water because Duffin's land could be irrigated with surface water if ASCC were to install a pond.⁴⁰ This argument has no legal support. Nothing in I.C. § 42-228 says recovered water can only be used on land to which ASCC is incapable of delivering surface water. The affidavits of Steven Howser in this matter demonstrate that ASCC has difficulty serving its stockholders, and that the recovery of water from the Duffin well enables ASCC to more effectively fulfill its responsibilities.

Therefore, Plaintiffs respectfully ask the Court to deny the SWC's argument that recovery wells can only be used to deliver water

IV. CONCLUSION

ASCC agrees with IDWR in that it "is using the recovery well statute to make up for its inability to supply surface water to its shareholders."⁴¹ ASCC admits that it loses so much water through seepage from its canal irrigation system that delivery to its shareholders is a challenge. To overcome this challenge, ASCC has various options at its disposal, including reducing waste at the end of its laterals, lining the canal to reduce seepage, and installing a pipe to practically eliminate seepage. Another option, provided for by the Idaho Legislature, is the use of recovery wells to recapture seepage. ASCC has elected to use recovery wells as a cost-efficient solution, not as a means of enlarging its existing water rights in violation of I.C. § 42-234(5).

⁴⁰ SWC *Memo. in Supp. of Mot. for Summ. J.*, at 14-15.

⁴¹ IDWR's *Mot. & Mem. in Supp. of Summ. J.* at 10.

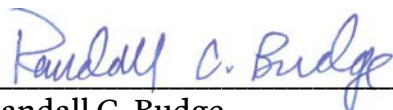
Importantly, IDWR does not dispute that ASCC uses advanced modeling techniques to determine its loss, that ASCC reclaims from the aquifer much less that it loses through seepage, that ASCC is only recovering water in areas where there exists a “mound” of water formed during the irrigation season beneath ASCC’s service area, or that the Duffin well does in fact recover resulting from ASCC irrigation.⁴²

IDWR’s and SWC’s arguments are not supported under a plain reading of I.C. § 42-288. Instead, they create confusion in a rather straightforward statute and lead to unreasonable and impractical results.

Because there are no genuine issues of material fact that ASCC’s use of recovery wells is well within the guidelines established under I.C. § 42-228, the Court should deny IDWR’s and SWC’s motions for summary judgment, and grant Plaintiffs’ motion for summary judgment. Further, because ASCC and its shareholders are statutorily compliant, IDWR’s civil actions and notices of violation to ASCC shareholders Duffins, KBC Farms, LLC, and Funk are invalid.

DATED this 17th day of March, 2015.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED


By: 

Randall C. Budge
Thomas J. Budge

⁴² *Corrected Second Aff. of Steve Howser* ¶ 14.

CERTIFICATE OF SERVICE

I certify that on this 17th day of March, 2015, the foregoing document was served on the following persons in the manner indicated.



 Signature of person mailing form

Clerk of the District Court Snake River Basin Adjudication P.O. Box 2707 253 Third Avenue North Twin Falls, Idaho 83303-2707	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
John K. Simpson/Travis L. Thompson Barker Rosholt & Simpson LLP P.O. Box 485 Twin Falls, Idaho 83303-0485 tlt@idahowaters.com	<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
W. Kent Fletcher Attorney at Law P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	<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
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