

Jerry R. Rigby (ISB No. 2470)
RIGBY, ANDRUS & RIGBY LAW, PLLC
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768
Email: jrigby@rex-law.com

Attorneys for Fremont Madison Irrigation District, Madison Ground Water District, and Idaho Irrigation District

Robert L. Harris (ISB No. 7018)
D. Andrew Rawlings (ISB No. 9569)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Email: rharris@holdenlegal.com
arawlings@holdenlegal.com
Court Service: efiling@holdenlegal.com

Attorneys for the Basin 33 Water Users

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BASIN 33 WATER USERS, a coalition of
water right holders, and the UPPER VALLEY
WATER USERS, a coalition of water right
holders,

Petitioners,

v.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV01-20-08069

Fee Category L.3.a – \$221.00

**JOINT NOTICE OF APPEAL AND
PETITION FOR JUDICIAL REVIEW
OF FINAL AGENCY ACTION**

Wildman, Eric J.

IN THE MATTER OF DESIGNATING THE
EASTERN SNAKE PLAIN AQUIFER
GROUND WATER MANAGEMENT AREA

Petitioners Upper Valley Water Users¹, by and through their counsel of record, Rigby, Andrus & Rigby Law, PLLC, and the Basin 33 Water Users², by and through their counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby file this *Joint Notice of Appeal and Petition for Judicial Review of Final Agency Action* challenging a final decision by the Idaho Department of Water Resources (“IDWR” or “Department”), pursuant to Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279. The Basin 33 Water Users and Upper Valley Water Users are referred to collectively herein as the “Petitioners.”

STATEMENT OF THE CASE

1. This matter concerns IDWR Director Gary Spackman’s issuance of his *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (dated November 2, 2016).

2. More specifically, this is a civil action pursuant to Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279 seeking judicial review of the *Final Order on Fact Issue* dated April 21, 2020, which made final a prior interlocutory order issued by the hearing officer (IDWR Director Gary Spackman) entitled *Order on Legal Issues* dated January 9, 2020.

1 The Upper Valley Water Users consist of the Fremont-Madison Irrigation District, Madison Ground Water District, and Idaho Irrigation District.

2 The Basin 33 Water Users are listed on the attached Exhibit A.

3. This appeal only seeks review of the legal matters decided by Director Spackman's *Order on Legal Issues* (the "Order"), and does not seek review of the factual matter concerning inclusion of a certain area near Rexburg within the boundaries of the Eastern Snake Plain Aquifer Ground Water Management Area, which was the sole factual question addressed at the hearing held on February 18, 2020.

4. Pursuant to Idaho Code §§ 67-5270 and 67-5272, the Petitioners may petition for judicial review within twenty-eight (28) days of the service date of the final order issued in this matter, which in this matter is on or before May 19, 2020. *See also* IDAPA 37.01.01.791.02.

5. The Order is the subject of this *Joint Notice of Appeal and Petition for Judicial Review of Final Agency Action*.

JURISDICTION AND VENUE

6. This petition is authorized by Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279.

7. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272, as the Order was entered in Ada County, Idaho. *See also* IDAPA 37.01.01.791.01.

8. Venue lies in this Court pursuant to Idaho Code §§ 42-1701A(4) and 67-5272 because the order was entered in Ada County, Idaho.

9. 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 Snake River Basin Adjudication District Court's procedures instruct the clerk of the district court in which the petition

is filed to issue a *Notice of Reassignment*. Petitioners have attached a copy of the Snake River Basin Adjudication District Court's *Notice of Reassignment* form for the convenience of the clerk.

10. The Order is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

I.R.C.P 84(c) INFORMATION

11. **Name of Agency For Which Judicial Review is Sought:** Idaho Department of Water Resources, an 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 Street, Boise, Ada County, Idaho 83720.

12. **Title of the District Court to Which the Petition is Taken:** In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

13. **Case Caption and Action for Which Judicial Review is Sought:** In the Matter of Designating The Eastern Snake Plain Aquifer Ground Water Management Area; Docket No. AA-GWMA-2016-001.

14. **Hearing Recording:** A hearing was held on February 18, 2020, which was recorded by the Department and is in the Department's possession (c/o Kris Margheim, 322 E. Front Street, Boise, Ada County, Idaho 83720). The audio hearing recordings are also currently posted on the Department's website at <https://idwr.idaho.gov/legal-actions/administrative-actions/ESPA-GWMA-order.html> (audio hearings recordings link on this page).

15. **Statement of Issues for Judicial Review:** Whether the Director erred in his decision on all matters contained in the Order, which addressed the following scope of legal issues as delineated by the Director in his *Deadline for IDWR's Submittal of Materials; Order on Motion*


Practice; Notice of Hearing and Scheduling Order; Order Authorizing Discovery dated September 25, 2019:

1. Whether the *Order Designating the ESPA GWMA* was procedurally deficient. Did the Director err when he issued the *Order Designating the ESPA GWMA* outside the auspices of the procedural requirements of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) and/or IDWR's Procedural Rules (IDAPA 37.01.01)?
2. Whether the Director should have conducted rulemaking. Did the Director err by not conducting rulemaking prior to designation of the ESPA GWMA?
3. Whether the Director should have designated the ESPA GWMA in a contested case. Did the Director err by not holding a contested case hearing to provide him the authority to designate an area of common ground water supply as a GWMA?
4. Whether adjudication and the formation of ground water districts in the ESPA forecloses the designation of a GWMA. Is the Director foreclosed from designating the ESPA GWMA because the ESPA has been adjudicated and contains existing ground water districts?


16. **Designation as to Whether a Transcript is Requested:** A hearing transcript is not being requested as the issues on appeal concern the legal matters decided in the Order.

17. **Attorney Certification:** I, Robert L. Harris, counsel for the Basin 33 Water Users, certify that (1) service of this petition has been made upon the Department; and (2) that the clerk of the agency has been paid the estimated fee for preparation of the record after I contacted Kris Margheim and Garrick Baxter of the Department, who provided an estimate of twenty dollars (\$20.00), which I then paid by hand-delivering a check for the estimated amount to the Eastern Region Office of IDWR at 900 N. Skyline Dr. Ste. A, Idaho Falls, Idaho 83402.

Dated this 19th day of May 2020.



Jerry R. Rigby
RIGBY, ANDRUS & RIGBY LAW, P.L.L.C.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2020, I served a copy of the following described pleading or document on the parties listed below by the indicated method.

Document Served: JOINT NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION

Attorneys and/or Individuals Served:

Gary Spackman
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
322 E. Front Street
Boise, Idaho 83702
Facsimile: (208) 287-4800
Email: gary.spackman@idwr.idaho.gov

☒ Mail
☐ Hand Delivery
☐ Facsimile
☐ Courthouse Box
☒ Email

Garrick Baxter
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 83720
322 E. Front Street
Boise, Idaho 83720-0098
Facsimile: (208) 287-4800
Email: garrick.baxter@idwr.idaho.gov

☒ Mail
☐ Hand Delivery
☐ Facsimile
☐ Courthouse Box
☒ Email

Courtesy Copy:

Snake River Basin Adjudication District Court
of the Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☒ Mail
☐ Hand Delivery
☐ Facsimile
☐ Courthouse Box
☐ Email

Chris M. Bromley
Candice McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Ste. 103
Boise, ID 83702
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

☐ Mail
☐ Hand Delivery
☐ Facsimile
☐ Courthouse Box
☒ Email

Robert E. Williams
Williams, Merservy & Lothspeich, LLP
153 East Main Street
P.O. Box 168
Jerome, Idaho 83338
rewilliams@wmlattys.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Sarah A. Klahn
SOMACH SIMMONS & DUNN
2033 11th Street, Ste. 5
Boulder, CO 80302
sklahn@somachlaw.com
dthompson@somachlaw.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Kirk Bybee
City of Pocatello
P.O. Box 4169
Pocatello, ID 83201
kibyee@pocatello.us

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Randall C. Budge
Thomas J. Budge
Racine Olson Nye Budge & Bailey, Chtd.
P. O. Box 1391
Pocatello, ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Travis L. Thompson
Barker Rosholt & Simpson, LLP
163 South Avenue West
P.O. Box 63
Twin Falls, ID 83303-0063
tlr@idahowaters.com
jf@idahowaters.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

W. Kent Fletcher
Fletcher Law Office
P. O. Box 248
Burley, ID 83318
wkf@pmt.org

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Albert P. Barker
John K. Simpson
Barker Rosholt & Simpson, LLP
1010 W. Jefferson, Suite 102
P. O. Box 2139
Boise, ID 83701-2139
apb@idahowaters.com
jks@idahowaters.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Michael C. Creamer
Givens Pursley LLP
601 West Bannock Street
P. O. Box 2720
Boise, ID 83701-2720
mcc@givenspursley.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Joseph F. James
125 5th Ave. West
Gooding, ID 83330
joe@jamesmvlaw.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Dylan B. Lawrence
J. Will Varin
Varin Wardwell LLC
242 N. 8th Street, Ste. 220
P. O. Box 1676
Boise, Idaho 83701-1676
dylanlawrence@varinwardwell.com
willvarin@varinwardwell.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
P. O. Box 250
Rexburg, Idaho 83440
jrigby@rex-law.com

- ☐ Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Courthouse Box
- ☒ Email



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Exhibit A

to

Joint Notice of Appeal

List of Basin 33 Water Users

1. Pancheri Inc. – 1494 Hwy 33, Howe ID. 83244
2. Pancheri Bros. LLC. – 1460 Hwy33, Howe ID. 83244
3. Matt Lagomarsino – 1798 W 4000 N, Howe ID 83244
4. Sunny Hawley, Estate of Lawrence R & Venice H Hawley, Vance Hawley, c/o Jeff Hawley – 3895 N LLR Hwy, Howe ID 83244
5. Owen Romrell – 1593 W 3700 N, Howe ID 83244
6. Little Lost River Land & Cattle LTD. c/o Dennis Weeks – 3774 N 1800 W, Howe ID 83244
7. Wade Williams – 1304 W 3880 N, Howe ID. 83244
8. Paige Woodie McAfee, Woodie Land & Livestock – 1293 W 3700 N, Howe ID 83244
9. Allen Farms Inc., N Scott Allen, Norman S Allen, - 3901 N LLR Hwy , Howe ID 83244
10. WT Williams Inc. – 3094 N 3200 E , Twin Falls ID 83301
11. David Andreason – 3794 LLR Hwy, Howe ID 83244
12. Wayne Bare, c/o Karen Bare Hoff – 1790 W 3720 N , Howe ID 83244
13. David Callister – 1454 W 3700 N, Howe ID 83244
14. Don Callister – 1496 W 3700 N, Howe ID 83244
15. Makayla Callister – 1454 W 3700 N, Howe ID 83244
16. Jason Fuger – 1333 W 3700 N, Howe ID 83244
17. Todd Echeverria – 1746 W 3800 N, Howe ID 83244
18. Sandra Drussel – 1611 W 3800 N, Howe ID 83244
19. Andrew Haight, Lynn Haight, c/o Dean Haight – 1521 W 3800 N, Howe ID 83244
20. Brian Harrell, Ilene Harrell, Carolyn Harrell – 1665 W 3900 N, Howe ID 83244
21. Barbara Hejtmanek, Thomas Hejtmanek – 1395 W 3900 N, Howe ID 83244
22. Weston Hejtmanek – 3082 W 2500 N, Arco ID 83213
23. Karen Isham - 4355 Ilene Cir. , Ammon Id 83406
24. Jaymon Knight – 1450 W 3800 N, Howe ID 83244
25. Kirk Nickerson – 3880 N 1300 W, Howe ID 83244
26. Keith Nickerson – 3900 N 1300 W, Howe ID 83244
27. Suzanne Norris, c/o Robert Norris – 3842 N 1800 W, Howe ID 83244
28. Mike O Maley – 1740 W 3900 N, Howe ID 83244
29. Aaron Romrell, Misty Romrell – 1600W 3651 N, Howe ID 83244
30. Lynn Bingham
31. Craters of the Moon Farms LLC , c/o Tyson Burtenshaw
32. Dean Mays – 1441 Hwy 33, Howe ID 83244
33. Isham Farms – 3836 N 1300 W, Howe ID 83244
34. Leo Amy – 1398 Hwy 33, Howe ID 83244
35. Russell Mays, Kaylin Mays – 974 Hwy 33, Howe ID 83244
36. Roy Sermon – 1575 W 3600 N, Howe ID 83244