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RECEIVED
May 15, 2023
DEPARTMENT OF
WATER RESOURCES

Wildman, Eric J.

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

**DISTRICT COURT OF THE STATE OF IDAHO
FOURTH JUDICIAL DISTRICT
ADA COUNTY**

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and GARY SPACKMAN in
his capacity as the Director of the Idaho
Department of Water Resources.

Respondents.

CV01-23-07893

Case No. CV- _____

**PETITION FOR
JUDICIAL REVIEW**

Fee Category L.3: \$221.00

IN THE MATTER OF THE
DISTRIBUTION OF WATER TO
VARIOUS WATER RIGHTS HELD BY
AND 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

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, submits this petition for judicial review pursuant to Idaho Code §§ 42-1701A and 67-5270 and Rule 84 of the Idaho Rules of Civil Procedure.

1. This petition requests judicial review of the Amended Final Order Regarding Compliance with Approved Mitigation Plan (“Amended Final Order”) issued by the Director of the Idaho Department of Water Resources (“Department”) on April 24, 2023, in *In the Matter of the Distribution of Water to Various Water Rights Held by and 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*, IDWR Docket No. CM-DC-2010-001, and *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001.

2. This court is the proper venue under Idaho Code § 67-5272(a) because the hearing was held in Ada County, Idaho, and under Idaho Code § 67-5272(b) because the final agency action was taken in Ada County, Idaho.

3. Pursuant to an Administrative Order issued by the Idaho Supreme Court on December 9, 2009, this case should be reassigned to the presiding judge of the Snake River Basin Adjudication district court for further proceedings.

4. A hearing was held by the Director on February 8, 2023, at the Department’s state office located at 322 E. Front Street, Suite 648, Boise, Idaho 83702. An audio recording of the hearing was made by the Department. The recording is believed to be in the possession of Sarah Tschohl at the Department’s state office located at 322 E. Front Street, Suite 648, Boise, Idaho 83702.

5. IGWA submits the following preliminary statement of issues for judicial review:


- 5.1 Whether every finding of fact and conclusion of law in the Amended Final Order is supported by substantial evidence on the record as a whole.
- 5.2 Whether Director erred as a matter of law in concluding that the IGWA-SWC Settlement Agreement unambiguously prescribes how the signatory districts’ proportionate groundwater conservation obligations are to be calculated.
- 5.3 Whether the Director erred as a matter of law in concluding that the IGWA-SWC Settlement Agreement unambiguously precludes the calculation of the signatory district’s proportionate groundwater conservation obligations relative to total groundwater diversions from the ESPA.

- 5.4 Whether Director erred as a matter of law in concluding that the IGWA-SWC Settlement Agreement unambiguously prescribes how annual groundwater conservation will be measured.
 - 5.5 Whether the Director erred as a matter of law in concluding that the IGWA-SWC Settlement Agreement unambiguously precludes averaging for the purpose of measuring compliance with groundwater conservation.
 - 5.6 Whether the Director erred as a matter of law in concluding that the IGWA-SWC Settlement Agreement is neither patently nor latently ambiguous.
 - 5.7 Whether the Director's conclusion that IGWA offered neither evidence nor argument that the IGWA-SWC Settlement Agreement is ambiguous is supported by substantial evidence in the record as a whole.
 - 5.8 Whether the Director's reapportionment of contractual mitigation obligations pursuant to finding of fact number 19 of the Amended Final Order is supported by substantial evidence in the record as a whole, violates constitutional or statutory provisions, is in excess of the statutory authority of the Director, or is arbitrary, capricious, or an abuse of discretion.
 - 5.9 Whether finding of fact number 43 of the Amended Final Order is supported by substantial evidence in the record as a whole.
 - 5.10 Whether the Amended Final Order otherwise violates constitutional or statutory provisions, exceeds the statutory authority of the Department, was made upon unlawful procedure, is not supported by substantial evidence on the record as a whole, or is arbitrary, capricious, or an abuse of discretion of the Director.
 - 5.11 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for reapportioning contractual mitigation obligations under the IGWA-SWC Settlement Agreement, without a reasonable basis in fact or law.
 - 5.12 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for failing to apply Idaho law concerning contract interpretation, without a reasonable basis in fact or law.
 - 5.13 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for declaring the IGWA-SWC Settlement Agreement to be without any patent or latent ambiguity, without a reasonable basis in fact or law.
 - 5.14 Pursuant to I.R.C.P. 84(c)(5), IGWA reserves the right to assert additional issues for judicial review. A final statement of issues will be contained in IGWA's opening brief to be submitted in support of this Petition.
6. A transcript of proceedings held before the Department is requested.

7. The undersigned attorney certifies as follows:
 - 7.1 Service of this Petition has been made on the Department.
 - 7.2 A request has been made to Department for the estimated fee to prepare the transcript of the hearing held February 8, 2023, and to prepare the agency record.
 - 7.3 IGWA will promptly pay the estimated fee for the Department to prepare the transcript and the agency record.

DATED this 15th day of May, 2023.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2023, I filed the foregoing document via iCourt and served it upon the persons below via email as indicated:


Thomas J. Budge

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