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DISTRICT COURT OF THE STATE OF IDAHO

FOURTH JUDICIAL DISTRICT

ADA COUNTY

Wildman, Eric J.

IDAHO GROUND WATER APPROPRIATORS,
INC., BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT, and BINGHAM GROUND
WATER DISTRICT,

Petitioners,

vs.

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

Respondents.

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

Case No. CV01-23-08187

**Ground Water Districts'
Petition for Judicial Review**

Fee Category L.3: \$221.00

IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, AND TWIN FALLS
CANAL COMPANY

Idaho Ground Water Appropriators, Inc., acting for and on behalf of North Snake Ground Water District, Magic Valley Ground Water District, Carey Valley Ground Water District, Aberdeen-American Falls Area Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District; and Bingham Ground Water District and Bonneville-Jefferson Ground Water District (collectively, the “Ground Water Districts”), by and through counsel, submit this petition for judicial review pursuant to Idaho Code §§ 67-5270 through 67-5279 and Rule 84 of the Idaho Rules of Civil Procedure.

1. This petition seeks judicial review of agency action taken by the Idaho Department of Water Resources (“IDWR” or “Department”).
2. This petition is taken to the District Court of the State of Idaho, Fourth Judicial District, Ada County.
3. This petition requests judicial review of the following orders issued by the Director of the Department in IDWR Docket No. CM-DC-2020-001 (collectively, the “Orders”):
 - 3.1 *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* issued April 21, 2023 (“*Fifth Methodology Order*”).
 - 3.2 *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* issued April 21, 2023 (“*April 2023 As-Applied Order*”).
 - 3.3 *Notice of Hearing, Notice of Prehearing Conference, and Order Authorizing Discovery* issued April 21, 2023 (“*Hearing Notice*”).
 - 3.4 *Scheduling Order and Order Authorizing Remote Appearance at Hearing* issued May 2, 2023 (“*Scheduling Order*”).
 - 3.5 *Notice of Materials Department Witnesses May Rely Upon at Hearing and Intent to Take Official Notice* issued May 5, 2023 (“*Order Limiting Evidence*”).
 - 3.6 *Order Denying the Cities’ Motion for Appointment of Independent Hearing Office and Motion for Continuance and Limiting Scope of Depositions* issued May 5, 2023 (“*Order Limiting Discovery*”).

4. This court is the proper venue under Idaho Code § 67-5272(a) because the agency action was taken in Ada County, Idaho.

5. 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.

6. The *Fifth Methodology Order* and the *April 2023 As-Applied Order* are final orders under the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code. The Director did not hold a hearing prior to issuing either order.

7. The *Hearing Notice*, *Scheduling Order*, *Order Limiting Evidence*, and *Order Limiting Discovery* are procedural or intermediate orders under the Idaho Administrative Procedures Act, and are immediately reviewable under Idaho Code § 67-5271 because review of the final agency action would not provide an adequate remedy.

8. The Director held a prehearing conference on April 28, 2023, before denying a motion for continuance filed by the Cities and joined by the Ground Water Districts, as documented in the *Order Limiting Discovery*. An audio recording of the prehearing conference is held at the Department's state office located at 322 E. Front Street, Boise, Idaho 83702.

9. The Ground Water Districts submit the following preliminary statement of issues for judicial review:

9.1 Whether the Director violated the Ground Water Districts' constitutional right to due process and the Idaho Administrative Procedures Act by issuing the *Fifth Methodology Order* without first an evidentiary hearing.

9.2 Whether the Director violated the Idaho Administrative Procedures Act by failing to base the findings of fact in the *Fifth Methodology Order* exclusively on the evidence in the record of the contested case.

9.3 Whether the *Fifth Methodology Order* is supported by substantial evidence on the record as a whole.

9.4 Whether the *Fifth Methodology Order* and the *April 2023 As-Applied Order* violate rules 10.07, 10.08, 20.03, 20.04, 40.03, and/or 42.01 of the Rules for Conjunctive Management of Ground Water Resources by failing to apply the futile call doctrine or principles of full economic development of underground water resources and reasonable use of water.

9.5 Whether the Director violated due process and the Idaho Administrative Procedures Act, acted upon unlawful procedure, and/or abused his discretion by scheduling an

after-the-fact hearing June 6-10, 2023, which does not provide adequate time for the Ground Water Districts to be prepared to properly address the issues involved in the *Fifth Methodology Order* and the *April 2023 As-Applied Order*, and by denying the Cities' and the Ground Water Districts' motion to continue the hearing to provide adequate time to prepare.

- 9.6 Whether the Director violated constitutional or statutory provisions, acted upon unlawful procedure, and/or abused his discretion by blocking the Ground Water Districts from discovering all of the information he considered in developing the *Fifth Methodology Order* and the *April 2023 As-Applied Order*.
- 9.7 Whether the Director violated constitutional or statutory provisions, acted upon unlawful procedure, and/or abused his discretion by blocking the Ground Water Districts, pursuant to the *Order Limiting Evidence*, from calling Department witnesses who possess information that is relevant to this case.
- 9.8 Whether the Director violated constitutional or statutory provisions, acted upon unlawful procedure, and/or abused his discretion by blocking the Ground Water Districts, pursuant to the *Order Limiting Discovery*, from discovering information that is relevant to this case.
- 9.9 Whether the *Orders* were otherwise made in violation of constitutional or statutory provisions, in excess of the statutory authority of the Department, or upon unlawful procedure, or are not supported by substantial evidence on the record as a whole, or are arbitrary, capricious, or an abuse of discretion.
- 9.10 Whether the Director is liable for damages and/or attorney fees under 42 U.S.C. § 1983 for deprivation of the due process rights of Ground Water Districts.
- 9.11 Whether the Director is liable for attorney fees under Idaho Code § 12-117 for depriving the Ground Water Districts of a hearing and opportunity to present evidence prior to issuing the *Fifth Methodology Order*, without a reasonable basis in fact or law.
- 9.12 Whether the Director is liable for attorney fees under Idaho Code § 12-117 for denying the Cities' and the Ground Water Districts' motion for continuance of the after-the-fact hearing scheduled for June 6–10, 2023, thereby depriving them of a fair opportunity to challenge the *Fifth Methodology Order* and the *April 2023 As-Applied Order*, without a reasonable basis in fact or law.
- 9.13 Whether the Director is liable for attorney fees under Idaho Code § 12-117 for failing to apply the futile call doctrine or the principles of optimum development of water resources, full economic development of underground water resources, and/or reasonable use of water, without a reason basis in fact or law.

9.14 Pursuant to I.R.C.P. 84(c)(5), the Ground Water Districts reserve the right to assert additional issues for judicial review, which will be set forth in briefs filed in this action.

10. The Ground Water Districts desire a transcript of the prehearing conference held before the Director on April 28, 2023. Given the urgent need for this transcript to support Ground Water Districts' motion for stay filed herewith, Ground Water Districts have at their expense hired M&M Court Reporting to transcribe the audio recording of the hearing posted to the Department's website.

11. The undersigned attorneys certify as follows:

11.1 Service of this Petition has been made on the Department.


11.2 A request has been made to the Department for the estimated fee to prepare the agency record.


11.3 The Ground Water Districts will promptly pay the estimated fee for the Department to prepare the agency record.

DATED this 19th day of May, 2023.

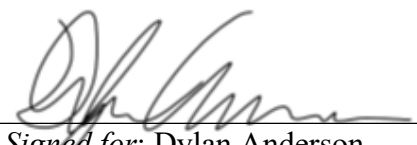
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OLSEN & TAGGART PLLC

By: 
Thomas J. Budge
Attorneys for IGWA


By: 
Signed for: Skyler C. Johns
Attorneys for Bonneville-Jefferson
Ground Water District

DYLAN ANDERSON LAW

By: 
Signed for: Dylan Anderson
Attorney for Bingham Ground Water
District

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:



Thomas J. Budge

Clerk of the Court Jerome County District Court 233 West Main Street Jerome, ID 83338	iCourt
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