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DEPARTMENT OF  
WATER RESOURCES

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

CITY OF IDAHO FALLS, CITY OF  
POCATELLO, CITY OF BLISS, CITY OF  
BURLEY, CITY OF CAREY, CITY OF  
DECLO, CITY OF DIETRICH, CITY OF  
GOODING, CITY OF HAZELTON, CITY  
OF HEYBURN, CITY OF JEROME, CITY  
OF PAUL, CITY OF RICHFIELD, CITY OF  
RUPERT, CITY OF SHOSHONE, and CITY  
OF WENDELL

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

CV01-23-13238

Case No. \_\_\_\_\_

IDWR Docket No. CM-DC-2010-001

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

**(RE: POST-HEARING ORDER  
REGARDING FIFTH AMENDED  
METHODOLOGY ORDER)**

Fee Category: Exempt  
Idaho Code § 67-2301

Case Type: L.3.a

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

COME NOW the Cities of Idaho Falls, Pocatello, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell, by and through their respective counsel (“Petitioners”), and hereby submit this *Notice of Appeal and Petition for Judicial Review of Final Agency Action* (“Petition”) pursuant to Idaho Code § 42-1701A(4) and Idaho Code §§ 67-5270 through 67-5279, challenging a final decision of the Director of the Idaho Department of Water Resources (“IDWR” or “Department”). Pursuant to the Idaho Rules of Civil Procedure (“I.R.C.P.”) Rule 84(c)(5), Petitioners reserve the right to assert additional issues and/or clarify the issues for judicial review stated in this *Petition* or which are discovered later.

### **STATEMENT OF THE CASE**

1. On July 19, 2023, the Director issued a series of orders in the Surface Water Coalition delivery call, a contested case that has been ongoing since 2005: (1) *Post-Hearing Order Regarding Fifth Amended Methodology Order*; (2) *Order Revising April 2023 Forecast Supply and Amending Curtailment Order (Methodology Steps 5 & 6)*; and (3) *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*.

2. This Petition concerns the Director’s *Post-Hearing Order Regarding Fifth Amended Methodology Order* (“Post-Hearing Order”).

3. This is a civil action pursuant to Idaho Code §§ 42-1701A(4), 67-5270, and 67-5279 seeking judicial review of the *Post-Hearing Order*.

4. The *Post-Hearing Order* is a final order of the Department because it was issued by the agency head. IDAPA 37.01.01.740.01.

5. Pursuant to Idaho Code §§ 67-5273, the Petitioners may petition for judicial review within twenty-eight (28) days of issuance of the *Post-Hearing Order*, which in this matter is on or before August 16, 2023. *See also* IDAPA 37.01.01.740.02.d.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction and venue over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272, as IDWR is located in Ada County.

7. 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 SRBA District Court’s procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*.

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

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

9. **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 83702.

10. **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.

11. **Case Caption and Action for Which Judicial Review is Sought:** 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.

12. **Hearing Recording:** A hearing was held in this matter beginning on June 6, 2023, and ending on June 9, 2023. A recording and transcript of the hearing were made. The recording is in the possession of the Idaho Department of Water Resources, 322 E. Front St. Ste. 648, Boise, Idaho 83702. The transcript of the hearing has already been made and is in the possession of Petitioners.

13. **Statement of Issues for Judicial Review:** An initial list of the statement of issues for judicial review are:

- a. Whether the *Post-Hearing Order* violates all or some of the provisions of Idaho Code § 67-5279(3).
- b. Whether the Director violated Petitioners' rights to due process by limiting the scope of discovery and time in which to complete discovery, making it impossible for Petitioners to satisfy certain "clear and convincing" evidentiary standards.

- c. Whether the *Post-Hearing Order* wrongly concluded that Petitioners failed to provide “clear and convincing” evidence that certain members of the Surface Water Coalition (“SWC”) are irrigating fewer acres than the *Fifth Amended Methodology Order* claimed were being irrigated.
- d. Whether the *Post-Hearing Order* wrongly concluded that Petitioners failed to provide “clear and convincing” evidence that the use of water by certain members of the SWC is unreasonable.

14. **Designation as to Whether a Transcript is Requested:** Petitioners are in possession of the hearing transcript and do not request any copies from the Department at this time. Petitioners intend to use the transcript in this proceeding.

15. **Attorney Certification:** The undersigned attorneys certify that Service of this Petition has been made on the Department.

DATED this 16th day of August 2023.


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**SOMACH SIMMONS & DUNN, P.C.**

By:   
Sarah A. Klahn (ISB #7928)  
Maximilian C. Bricker (ISB #12283)  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August 2023, I served the foregoing document on the persons below via email and iCourt unless otherwise indicated:

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