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DEPARTMENT OF
WATER RESOURCES

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**DISTRICT COURT OF THE STATE OF IDAHO
FIFTH JUDICIAL DISTRICT
JEROME 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.

Case No. CV-^{CV27-22-00945}_____

**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 Final Order Regarding Compliance with Approved Mitigation Plan (“Final Order”) issued by the Director of the Idaho Department of Water Resources (“Department”) on September 8, 2022, and the Order Granting Request for Hearing; Notice of Prehearing Conference (“Reconsideration Order”) issued by the Director on October 13, 2022, *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 because many of the water rights that are the subject to curtailment under the Final Order and the Reconsideration Order are located in Jerome 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. No hearing was held by the Director prior to issuing the Final Order or the Reconsideration Order. The Director held a status conference prior to issuing the Final Order which was recorded and is held at the Department’s state office located at 322 E. Front Street, Boise, Idaho 83702.


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

- 5.1 Whether the Director exceeded his statutory authority by adjudicating IGWA’s contractual obligations under the IGWA-SWC Settlement Agreement even though it was unnecessary to do so to perform his statutory water distribution duties.
- 5.2 Whether the Director violated IGWA’s constitutional right of due process, the Idaho Administrative Procedures Act, and/or Department rules of procedure by adjudicating IGWA’s rights and obligations under the IGWA-SWC Settlement Agreement without first holding a hearing.
- 5.3 Whether the Director violated the Department’s rules of procedure by issuing the Final Order in response to a request for a status conference, without any motion having been filed as required by the IDAPA 37.01.01.220.

- 5.4 Whether the Final Order is supported by substantial evidence on the record as a whole.
- 5.5 Whether the Final Order violates constitutional or statutory provisions, was made upon unlawful procedure, or is arbitrary, capricious, or an abuse of discretion due the Director's failure to apply Idaho law concerning interpretation of contracts.
- 5.6 Whether the Reconsideration Order violates constitutional or statutory provisions, was made upon unlawful procedure, or is arbitrary, capricious, or an abuse of discretion by failing to withdraw those parts of the Final Order that adjudicate IGWA's contractual obligations under the IGWA-SWC Settlement Agreement.
- 5.7 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for adjudicating IGWA's contractual obligations without statutory authority to do so.
- 5.8 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for depriving IGWA and its members of a hearing and opportunity to present evidence without a reasonable basis in fact or law.
- 5.9 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.
- 5.10 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, if one exists, 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 status conference and to prepare the agency record.
 - 7.3 IGWA will promptly pay the estimated fee for the Department to prepare the transcript, if one exists, and to prepare the agency record.


DATED this 24th day of October, 2022.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2022, 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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