

Roger D. Ling, ISB #1018  
LING ROBINSON & WALKER  
P.O. Box 396  
Rupert, Idaho 83350  
Telephone: (208) 436-4717  
Facsimile: (208) 436-6804

C. Tom Arkoosh, ISB #2253  
ARKOOSH LAW OFFICES, CHTD.  
P.O. Box 32  
Gooding, Idaho 83330  
Telephone: (208) 934-8872  
Facsimile: (208) 934-8873

Attorneys for A & B Irrigation District and  
Burley Irrigation District

Attorneys for American Falls  
Reservoir District #2

John A. Rosholt, ISB #1037  
John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
BARKER ROSHOLT & SIMPSON LLP  
113 Main Ave. West, Suite 303  
Twin Falls, Idaho 83301-6167  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444

W. Kent Fletcher, ISB #2248  
FLETCHER LAW OFFICE  
P.O. Box 248  
Burley, Idaho 83318  
Telephone: (208) 678-3250  
Facsimile: (208) 878-2548

Attorneys for Minidoka Irrigation District

Attorneys for Milner Irrigation District,  
North Side Canal Company, and  
Twin Falls Canal Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO VARIOUS WATER RIGHTS )  
HELD BY OR 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 ) )  
) )  
) )  
) )

**PETITION REQUESTING  
HEARING ON DIRECTOR'S  
FEBRUARY 14, 2005 ORDER  
DENYING REQUEST TO  
DESIGNATE EASTERN SNAKE  
PLAIN AQUIFER AS A  
GROUND WATER  
MANAGEMENT AREA**

COMES NOW, 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 (hereinafter collectively referred to as “Petitioners”), pursuant to Idaho Code § 42-1701A and the Department’s rules of procedure (IDAPA 37.01.01), and hereby requests a hearing on the Director’s February 14, 2005 *Order* (hereinafter “*Order*”), in which the Director denied the Petitioners’ request to designate the Eastern Snake Plain Aquifer (“ESPA”) as a ground water management area pursuant to Idaho Code § 42-233b. The initial basis for the Petitioners’ request is as follows.

### INTRODUCTION

The Petitioners request a hearing on and rescission of the Director’s following decision in his February 14, 2005 *Order*:

3. The part of the Petition seeking the designation of the ESPA as a ground water management area is denied. This portion of the *Order* is final. Any person aggrieved by this final portion of the *Order* has the right to request a hearing before the Department pursuant to the provisions of Idaho Code § 42-1701A(3).

*Order* at 34, ¶ 3.

### FACTS

1. The ESPA is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report “Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake Plain, Idaho.” USGS Professional Paper 1408-F, 1992, IDAPA 37.03.11.050.01.
2. The water supply in the ESPA is hydraulically connected to the Snake River and tributary water sources at various places and to varying degrees. *August 3, 2001 Orders Designating the American Falls and Thousand Springs Ground Water Management Areas* at 1.
3. The Petitioners’ water rights, both natural flow and storage rights, depend upon various spring flows and reach gains to the Snake River that occur along various points of the

river from Shelley, Idaho, downstream to Minidoka Dam just east of Burley, Idaho (hereinafter referred to as the “American Falls reach”).

4. Tributary spring flows and reach gains to the American Falls reach have been in steady decline in recent history resulting in inadequate water supplies to satisfy the Petitioners’ water rights.

5. The Director previously issued three moratorium orders regarding the processing and approval of all applications for permit to appropriate water from surface and ground water sources, including areas in the ESPA. *See May 15, 1992 Moratorium Order; January 6, 1993 Moratorium Order; April 30, 1993 Amended Moratorium Order.* The latest moratorium was recently continued and reaffirmed by Governor Dirk Kempthorne through Executive Order No. 2004-02 on March 20, 2004.

6. The Director designated portions of the ESPA as two separate ground water management areas on August 3, 2001; the American Falls Ground Water Management Area and the Thousand Springs Ground Water Management Area. *See Orders Designating the American Falls and Thousand Springs Ground Water Management Areas.* Two years later, on August 29, 2003, the Director issued an *Order Dissolving the Thousand Springs Ground Water Management Area* and an *Order Modifying the Boundaries of the American Falls Ground Water Management Area.* The Director’s latest orders have been challenged and are the subject of separate contested cases.

### **BASIS FOR PETITION**

#### Factual:

1. Water levels across the ESPA have declined, in both general regional and specific locations.

2. The ESPA has witnessed unreasonable negative changes in water storage in recent history.
3. Tributary spring outflows from the ESPA have declined, both in total water supply and seasonally.
4. Reach gains to the Snake River in the American Falls reach have declined, particularly in the last five years.
5. The water supply in the ESPA is insufficient to meet the demands of all existing water rights, including surface water natural flow and storage rights and ground water rights.
6. An increased number of applications for permit to appropriate ground water have been filed with the Department in recent history.
7. An increased number of wells have been drilled in the ESPA, both for new water right applications, and for transfers of existing points of diversion that no longer provide adequate water supplies.
8. Increased power consumption by existing ground water rights.
9. Wells across the ESPA have been re-drilled and deepened. Increased impact on domestic wells across the ESPA.
10. Artesian well flows have declined in certain areas of the ESPA.
11. Surface water irrigation diversions have decreased in recent history, resulting in decreased incidental recharge to the ESPA.
12. Surface water rights, including natural flow and storage rights, have not been satisfied due to reduced tributary spring flows and reach gains.
13. State of Idaho drought declarations in the last five years. Water measurement data for the Snake River Basin watershed for the last six years.

14. Evidence of drought histories in the Pacific Northwest, statistical evaluations of probabilities of extended drought.

15. Recent snow surveys and watershed conditions, predictions for 2005.

16. Additional facts that may arise and be presented prior to or at the hearing.

Legal:

1. The ESPA at least meets the definition of a ground water management area as defined in Idaho Code § 42-233b.

2. The Department previously recognized that portions of the ESPA were approaching the conditions of a “critical ground water area”; hence the designations of the American Falls and Thousand Springs Ground Water Management Areas in 2001.

3. Ground water management areas and water districts perform different regulatory functions and can coexist.

4. The Director’s *Order* denying Petitioners’ request to designate the ESPA as a ground water management area is contrary to Idaho law.

5. Additional legal theories and claims that may arise and be presented prior to or at the hearing.

**REQUESTS FOR RELIEF**

1. A hearing on the portion of the Director’s February 14, 2005 Order denying the Petitioners’ request to designate the ESPA as a ground water management area.

2. Appointment of an independent hearing officer as provided for by Idaho Code § 42-1701A(2).

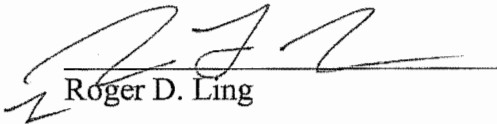
3. Review and rescission of the portion of the Director’s February 14, 2005 Order denying the Petitioners’ request to designate the ESPA as a ground water management area.

4. Designation of the ESPA as a ground water management area, and immediate implementation of the authorized and required actions of the Director provided for in Idaho Code § 42-233b.

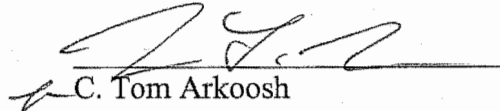
DATED this 7<sup>th</sup> day of March 2005.

LING ROBINSON & WALKER

ARKOOSH LAW OFFICES CHTD.



Roger D. Ling



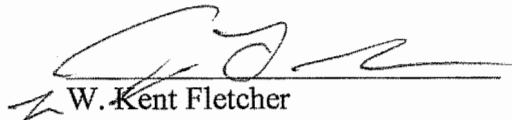
C. Tom Arkoosh

Attorneys for A & B Irrigation District  
and Burley Irrigation District

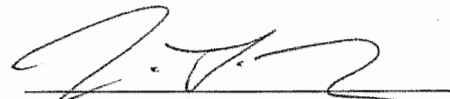
Attorneys for American Falls  
Reservoir District #2

FLETCHER LAW OFFICES

BARKER ROSHOLT & SIMPSON LLP



W. Kent Fletcher



John A. Rosholt  
John K. Simpson  
Travis L. Thompson

Attorneys for Minidoka Irrigation District

Attorneys for Milner Irrigation District,  
North Side Canal Company, and  
Twin Falls Canal Company

## CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of March, 2005, I served a true and correct copy of the foregoing *Petition Requesting Hearing on Director's February 14, 2005 Order Denying Petition to Designate the Eastern Snake Plain Aquifer as a Ground Water Management Area* on the following by the method indicated:

Via Email and U.S. Mail

Director Karl Dreher  
Idaho Department of Water Resources  
322 E. Front St.  
Boise, Idaho 83720-0098  
[vwigle@idwr.idaho.gov](mailto:vwigle@idwr.idaho.gov)

IDWR – Eastern Region  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

Jeffrey C. Fereday  
Michael C. Creamer  
Givens Pursley LLP  
601 Bannock St., Suite 200  
P.O. Box 2720  
Boise, Idaho 83701-2720  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)

IDWR – Southern Region  
1341 Fillmore St., Suite 200  
Twin Falls, Idaho 83301-3380

James C. Tucker  
Idaho Power Company  
1221 West Idaho St.  
Boise, Idaho 83702  
[jtucker2@idahopower.com](mailto:jtucker2@idahopower.com)

Kathleen Marion Carr  
U.S. Department of Interior  
550 West Fort St., MSC-020  
Boise, Idaho 83724

James S. Lochhead  
Adam T. DeVoe  
Brownstein, Hyatt & Farber P.C.  
410 17<sup>th</sup> St., 22<sup>nd</sup> Floor  
Denver, Colorado 80202  
[jlochhead@bhf-law.com](mailto:jlochhead@bhf-law.com)

Scott L. Campbell  
Moffatt Thomas Chtd.  
101 S. Capitol Blvd., 10<sup>th</sup> Floor  
P.O. Box 829  
Boise, Idaho 83701  
[slc@moffatt.com](mailto:slc@moffatt.com)

  
Travis L. Thompson