

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

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DEPARTMENT OF  
WATER RESOURCES

DUANE SWIFT, CLERK  
*[Signature]* DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

A & B IRRIGATION DISTRICT,

) Case No. 2009-000647

Petitioner,

vs.

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

) **PROCEDURAL ORDER**  
) **GOVERNING JUDICIAL REVIEW**  
) **OF AGENCY DECISION BY**  
) **DISTRICT COURT**

Respondents.

**IN THE MATTER OF THE PETITION  
FOR DELIVERY CALL OF A & B  
IRRIGATION DISTRICT FOR THE  
DELIVERY OF GROUND WATER AND  
FOR THE CREATION OF A GROUND  
WATER MANAGEMENT AREA**

A Petition for Judicial Review has been filed in the above-entitled District Court seeking judicial review of a final order issued by the Director of the Idaho Department of Water Resources. This *Order*, together with Rule 84, Idaho Rules of Civil Procedure, (I.R.C.P.), and the applicable statutes shall govern all proceedings before the court.

**1. Petition for Judicial Review or Cross-Petitions for Judicial Review; Filing Fees:** A&B Irrigation District filed a Petition for Judicial Review on August 31, 2009. If not already paid, all filing fees, if any, must be paid within seven (7) after entry of this

**Order.** Failure to timely pay any filing fee shall be grounds for dismissal without further notice.

**2. Stays:** Unless provided by Statute, the filing of a Petition or Cross Petition does not automatically stay the proceedings and enforcement of the action of an agency that is subject to the Petition. Any application or Motion for Stay must be made in accordance with I.R.C.P. 84(m).

**3. Form of Review:** Pursuant to 84(e)(1), when judicial review is authorized by statute, judicial review shall be based upon the record created before the Agency rather than as a trial de novo, unless the statute or the law provides for the procedure or standard. If the statute provides that the district court may take additional evidence upon judicial review, it may order the same on its own motion or the motion of any party. If the statute provides that review is de novo, the appeal shall be tried in the district court on any and all issues, on a new record. Pursuant to I.R.C.P. 84(e)(2), the scope of review on petition from an agency to the district court shall be as provided by statute.

**4. Preparation of Agency Record; Payment of Fees:** Pursuant to I.R.C.P. 84(f), when the statute provides what shall be contained in the official record of the agency upon judicial review, the agency shall prepare the record as provided by statute. Otherwise, the documents listed in paragraph (3) of I.R.C.P. 84(f) shall constitute the agency record for review. Petitioner and Cross-Petitioner shall pay all fees as required for preparation of the agency record in accordance with I.R.C.P. 84(f)(4). **The clerk of the agency in accordance with I.R.C.P. 84(f)(5) shall lodge the record with the agency within 14 days of the entry of this Order, or no later than September 24, 2009.** Any extension in time for preparation of the agency record shall be applied for by the agency to the district court.

**5. Preparation of Transcript, Payment of Fee:** The Court requires the provision of a written transcript prepared from the recorded or reported proceedings. It is the responsibility of the Petitioner (or Cross-Petitioner as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review. Pursuant to I.R.C.P. 84(g), the responsible party shall contact the agency clerk to determine the estimated cost of the transcript, and pay the estimated cost in accordance with I.R.C.P. 84(g)(1)(A) or (2)(A) as the case may be. **The transcript shall be lodged with the agency within 14 days of the entry of this Order, or no later than September 24, 2009.** The transcriber may apply to the district court for an extension of time, for good cause shown.

**6. Settlement of Transcript and Record:** Pursuant to I.R.C.P. 84(j), and unless otherwise provided by statute, upon receipt of the transcript and upon completion of the record, the agency shall mail or deliver Notice of Lodging of Transcript and Record to all attorneys of record or parties appearing in person and to the district court. **The parties shall have 14 days from the date of mailing of the notice to pick up a copy of the transcript and agency record and to object to the transcript or record.** All fees for the preparation of the transcript and record shall be paid by the responsible

party at or before the pick up of the agency record and transcript. Any objection to the record shall be determined by the agency within 14 days of the receipt of the objection and the agency decision on the objection shall be included in the record on petition for review. Upon the failure of the party to object within 14 days the transcript and record shall be deemed settled. Pursuant to I.R.C.P. 84(k), the settled record and transcript shall be lodged with the district court within 42 days of the entry of this Order or no later than October 22, 2009.

**7. Augmentation of the Record -- Additional Evidence Presented to District Court -- Remand to Agency to Take Additional Evidence:** Pursuant to I.R.C.P. 84(l) the agency record and/or transcript on review may be augmented upon motion by a party within 21 days of the filing of the settled transcript and record in the manner prescribed by Idaho Appellate Rule (I.A.R.) 30. The taking of additional evidence by the district court and/or agency on remand shall be governed by statute or I.R.C.P. 84(l).

**8. Briefs and Memoranda:** The petitioner's brief shall be filed with the clerk within 35 days after lodging of the transcript and record. The respondent's brief (cross-petitioner's brief) shall be filed within 28 days after service of petitioner's brief. The petitioner may file a reply brief within 21 days after service of respondent's brief. The organization and content of briefs shall be governed by I.A.R. 35 and 36. Pursuant to I.R.C.P. 84(p) only one (1) original signed brief may be filed with the court and copies shall be served on all parties.

**9. Extension of Time:** Motions to extend the time for filing a brief shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

**10. Motions:** All motions shall be submitted in conformity with I.R.C.P. 84(o) and shall be heard with out oral argument unless ordered by the court.

**11. Oral Arguments:** The court will set the time and date for Oral Argument at a future date. The form and order of argument shall be governed by I.A.R. 37.

**12. Judgment or Decision:** The Court's decision will be by written memorandum which shall constitute the Judgment or Decision required by I.R.C.P. 84(t)(1).

**13. Attorney's Fees and Costs on Appeal:** Costs and attorneys fees on judicial review shall be claimed, objected to and fixed in accordance with I.A.R. 40 and 41, provided that only one original signed claim, objection or supporting or opposing affidavit need be filed.

**14. Remittitur:** If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a remittitur remanding the matter to the agency as provided in I.R.C.P. 84(t)(4).

**15. Failure to Comply:** Failure by either party to timely comply with the requirement of this Order or applicable provisions of the Idaho Rules of Civil Procedure

of Idaho Appellate Rules, if applicable, shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorney's fees, striking of briefs, or dismissal of the appeal pursuant to I.R.C.P. 11 and 84(n) and I.A.R. 11.1 and 21.

Dated Sept. 10, 2009



JOHN M. MELANSON  
District Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11<sup>TH</sup> day of September, 2009 , she caused a true and correct copy of the foregoing PROCEDURAL ORDER on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto:

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Pocatello, ID. 83201

Dated this 11<sup>th</sup> day of September, 2009

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Santos Garza, Deputy Clerk