

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198  
**BARKER ROSHOLT & SIMPSON LLP**  
195 River Vista Place, Suite 204  
Twin Falls, Idaho 83301-3029  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District,  
North Side Canal Company, and Twin Falls  
Canal Company*

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 American Falls  
Reservoir District #2 and Minidoka  
Irrigation District*

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

IN THE MATTER OF PETITION TO  
AMEND RULE 50.01 OF THE  
CONJUNCTIVE MANAGEMENT RULES

**Docket No.**

**SURFACE WATER COALITION'S  
PETITION REQUESTING HEARING**

COME NOW, AMERICAN FALLS RESERVOIR DISTRICT #2, A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY and TWIN FALLS CANAL COMPANY (the "Surface Water Coalition" or "Coalition"), by and through their attorneys of record, and hereby submit their *Petition Requesting Hearing* pursuant to Idaho Code § 42-1701A(3) and the Department's Rules of Procedure (IDAPA 37.01.01. *et seq.*). The Coalition requests the Director to initiate informal proceedings for a period of 30-45 days to answer the Coalition's questions and concerns about the proposed repeal of Rule 50. If such a process is unsuccessful the Coalition would then request that discovery be authorized and a formal administrative hearing be held on this petition.

## INITIAL REASONS FOR PETITION

The Director issued a *Final Order* on August 29, 2014 denying Clear Springs Foods, Inc.'s petition to amend CM Rule 50.01 (definition of Eastern Snake Plain Aquifer as an "area of common ground water supply"). The Director further indicated that he would take administrative steps to "repeal" CM Rule 50. The Surface Water Coalition filed comments and supplemental comments with IDWR as part of the negotiated rulemaking process. *See SWC Supplemental Comments* (June 23, 2014); *Comments* (May 31, 2011); *Letter from Kent Fletcher* (May 25, 2011). The Coalition supports a definition of the ESPA that is based upon the most current and accepted science. Accordingly, the Coalition is aggrieved by the Director's decision to repeal rather than amend Rule 50 in this matter. Further, the Coalition has not previously been afforded an opportunity for a hearing on this matter.

It is unclear what effect a proposed repeal of Rule 50 will have upon the Coalition's outstanding water delivery call. If the Director seeks to eliminate outdated aquifer boundary delineations and properly administer all hydraulically connected junior priority ground water rights, then the repeal of Rule 50 is warranted. However, if the proposed repeal would have an injurious effect on the Coalition's water rights by artificially limiting which junior priority ground water rights are subject to administration, then the Director's action is not warranted and should be reversed. The Coalition seeks the opportunity to determine IDWR's intent with respect to the proposed repeal of Rule 50 and how that change will be implemented for purposes of conjunctive administration.

Further, it is unclear what effect continued references to an "area of common ground water supply" throughout the CM Rules will have on conjunctive administration and the Coalition's outstanding delivery call. Again, the Coalition seeks the opportunity to determine IDWR's intent and how those references will be handled and implemented for purposes of

conjunctive administration. If IDWR does not seek to limit or qualify the administration of hydraulically connected junior priority ground water rights, then the repeal of CM Rule 50 may be acceptable.

### **REQUEST FOR INFORMAL PROCEDURE**

The Coalition, pursuant to IDAPA 37.01.01.101, would request the opportunity for a period of 30-45 days to participate in an informal procedure with IDWR to better understand the proposed repeal of CM Rule 50. If the Coalition's questions can be adequately answered then a formal hearing may be unnecessary. However, the Coalition requests that such procedure be handled on an expedited basis well in advance of the 2015 irrigation season. The parties should have a clear and full understanding of how this action will affect water right administration next year. If the informal procedure is unsuccessful, the parties need sufficient time to conduct discovery and hold a hearing by the end of the year.

### **REQUEST FOR HEARING**

The Coalition, pursuant to Idaho Code § 42-1701A(3) and Rule 740.02.b of the Department's Rules of Procedure, hereby requests a hearing on the Director's above-referenced *Final Order*. No administrative hearing has been held on the Director's order and the Coalition has a statutory right to such a proceeding. The Coalition reserves the right to amend this petition as necessary.

### **MOTION TO AUTHORIZE DISCOVERY**

At the close of informal proceedings, if ordered, the Coalition further hereby moves for order authorizing discovery in this matter pursuant to Rule 521 of the Department's Rules of Procedure. The SWC requests the opportunity to discover the factual basis and analysis performed by the Director in issuing the *Final Order*.

DATED this 12<sup>th</sup> day of September, 2014.

**FLETCHER LAW OFFICE**



PS W. Kent Fletcher  
*Attorneys for American Falls Reservoir  
District #2 and Minidoka Irrigation District*

**BARKER ROSHOLT & SIMPSON LLP**



John K. Simpson  
Travis L. Thompson  
Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District, Ne  
Side Canal Company, and Twin Falls Canal  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of September, 2014, I served a copy of the foregoing,  
by email and U.S. Mail to the following:

Director Gary Spackman  
Deborah Gibson  
Garrick Baxter  
IDWR  
322 E. Front St.  
Boise, Idaho 83720-0098



John K. Simpson