

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
CHRIS M. BROMLEY, ISB #6530
Deputy Attorneys General
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208) 287-4800
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

Attorneys for Respondents-Appellants

**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,)
)
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,)
)
Respondents,)
)
and)
)
THE IDAHO GROUND WATER)
APPROPRIATORS, INC., THE CITY OF)
POCATELLO, FREMONT MADISON)
IRRIGATION DISTRICT, ROBERT & SUE)
HUSKINSON, SUN-GLO INDUSTRIES, VAL)

Case No. CV-2009-647

**IDWR'S AMENDED NOTICE OF
APPEAL**

(Filing Fee: Exempt)

SCHWENDIMAN FARMS, INC., DAVID)
SCHWENDIMAN FARMS, INC., DARRELL)
C. NEVILLE, SCOTT C. NEVILLE, and STAN)
D. NEVILLE,)

Intervenors.)

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)

TO: THE ABOVE NAMED RESPONDENT, A&B IRRIGATION DISTRICT; THE IDAHO GROUND WATER APPROPRIATORS, INC., THE CITY OF POCA TELLO, FREMONT MADISON IRRIGATION DISTRICT, ROBERT & SUE HUSKINSON, SUN-GLO INDUSTRIES, VAL SCHWENDIMAN FARMS, INC., DAVID SCHWENDIMAN FARMS, INC., DARRELL C. NEVILLE, SCOTT C. NEVILLE, STAN D. NEVILLE; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, the IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, INTERIM DIRECTOR (“Appellants”), appeal against the above named respondents to the Idaho Supreme Court from the district court’s MEMORANDUM DECISION AND ORDER ON PETITIONS FOR REHEARING, entered in the above entitled action on the 2nd day of November, 2010, the Honorable Judge Eric J. Wildman presiding. On November 23, 2010, Judge Wildman issued a JUDGMENT pursuant to Idaho Rule of Civil Procedure 54(a).¹

2. Appellants have a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 is an appealable order pursuant to Rule 11(f), Idaho Appellate Rules.

3. Appellants’ preliminary statement of the issues it intends to assert on appeal, which under Rule 17, Idaho Appellate Rules, does not prevent Appellants from asserting other issues, is as follows:

a. If the Director determines in a conjunctive management delivery call that the senior water users’ current beneficial use can be met with an amount of water that is less than the maximum decreed or licensed quantity, must the Director

¹ On December 10, 2010, IDWR filed its original notice of appeal with this Court. It was brought to IDWR’s attention that paragraph 1 mistakenly referred to an order issued by the Honorable Judge John M. Melanson in an unrelated water delivery call proceeding. The purpose of the Amended Notice of Appeal is to correct paragraph 1.

support his determination by clear and convincing evidence or preponderance of the evidence?

4. No order has been entered sealing all or any part of the record in the above entitled action.

5. No transcript is requested.

6. Appellants do not request that any documents be included in the clerk's record other than those automatically included under Rule 28, Idaho Appellate Rules.

7. Appellants request that the agency record, in addition to all exhibits and transcripts, be copied and sent to the Supreme Court.

8. I certify:

a. No reporter has been served because no transcript is requested.

b. The estimated transcript fee has not been paid because no transcript is requested.

c. That Appellants and the State of Idaho are exempt from paying the clerk of the above entitled court the estimated fee for preparation of the clerk's record pursuant to Idaho Code § 67-2301 and Idaho Appellate Rule 23.

d. That Appellants and the State of Idaho are exempt from paying the appellate filing fee pursuant to Idaho Code § 67-2301 and Idaho Appellate Rule 23.

e. That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 13th day of December, 2010.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Chief, Natural Resources Division
Deputy Attorney General



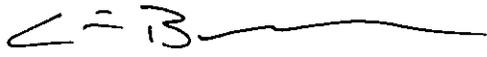
CHRIS M. BROMLEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2010, I caused to be served a true and correct copy of the foregoing IDWR's AMENDED NOTICE OF APPEAL to the following parties by the indicated methods:

Deputy Clerk Clerk of Minidoka County Court 715 G Street P.O. Box 368 Rupert, ID 83350 Fax: (208) 436-5272	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
John K. Simpson Travis Thompson Paul L. Arrington Sarah W. Higer BARKER ROSHOLT & SIMPSON LLP 113 Main Avenue West, Suite 303 P.O. Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Randy C. Budge Candice M. McHugh RACINE OLSON NYE BUDGE BAILEY P.O. Box 1391 Pocatello, ID 83201 rbc@racinelaw.net cmm@racinelaw.net	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Sarah A. Klahn Mitra M. Pemberton WHITE & JANKOWSKI LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Jerry R. Rigby Rigby Andrus and Moeller 25 N 2nd East Rexburg, ID 83440 jrigby@rex-law.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



CHRIS M. BROMLEY
Deputy Attorney General