

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, 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*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

**TWIN FALLS CANAL COMPANY, NORTH)
 SIDE CANAL COMPANY, A&B)
 IRRIGATION DISTRICT, AMERICAN)
 FALLS RESERVOIR DISTRICT #2,)
 BURLEY IRRIGATION DISTRICT,)
 MILNER IRRIGATION DISTRICT, and)
 MINIDOKA IRRIGATION DISTRICT,)**

Petitioners,

vs.

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

Respondents.

CASE NO. CV _____

Fee Category L.3 - \$96.00

**NOTICE OF APPEAL AND
 PETITION FOR JUDICIAL
 REVIEW OF FINAL AGENCY
 ACTION**

**(August 2013 Revised Forecast Supply
 Order)**

**IN THE MATTER OF DISTRIBUTION OF)
 WATER TO VARIOUS WATER RIGHTS)
 HELD BY OR FOR THE BENEFIT OF A&B)
 IRRIGATION DISTRICT, AMERICAN)**

**NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY
 ACTION (August 2013 Revised Forecast Supply Order)**

FALLS RESERVOIR DISTRICT #2,)
BURLEY IRRIGATION DISTRICT,)
MILNER IRRIGATION DISTRICT,)
MINIDOKA IRRIGATION DISTRICT,)
NORTH SIDE CANAL COMPANY, AND)
TWIN FALLS CANAL COMPANY)
 _____)

COME NOW, Petitioners, A&B Irrigation District (“A&B”), American Falls Reservoir District #2 (“AFRD #2”), Burley Irrigation District (“BID”), Milner Irrigation District (“Milner”), Minidoka Irrigation District (“MID”), North Side Canal Company (“NSCC”), and Twin Falls Canal Company (“TFCC”) (collectively hereafter referred to as the “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their undersigned counsel, and hereby file this Petition seeking judicial review of a final agency action by the Idaho Department of Water Resources.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of final orders issued by the Director of the Idaho Department of Water Resources, Gary Spackman, on August 27th and September 27th 2013.
2. The Director refused to hold an administrative hearing and denied the Petitioners’ statutory right to a hearing provided by I.C. § 42-1701A(3).

JURISDICTION AND VENUE

3. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.
4. This Court has jurisdiction over this action pursuant to Idaho Code § 67-5272.
5. Venue lies in this Court pursuant to Idaho Code § 67-5272 because Petitioner TFCC conducts business in Twin Falls County, Idaho and certain water rights, which are the

subject of the agency action, are delivered to the company's shareholders that own property located in Twin Falls County.

6. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. The Coalition has attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

7. The Director's September 27, 2013 *Order Denying Petition for Reconsideration; Denying Motion to Authorize Discovery; Denying Request for Hearing (Methodology Steps 6 - 8)*("Final Order") is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

8. Petitioner, American Falls Reservoir District #2 (AFRD #2), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Shoshone, Idaho. AFRD #2 delivers water to its landowners in Jerome, Lincoln, and Gooding Counties.

9. Petitioner, A&B Irrigation District (A&B), is an irrigation district organized and existing under the laws of the state of Idaho, with its principal place of business in Rupert, Idaho. A&B delivers water to its landowners in Jerome and Minidoka Counties.

10. Petitioner, Burley Irrigation District (BID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Burley, Idaho. BID delivers water to its landowners in Cassia County.

11. Petitioner, Milner Irrigation District (Milner), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Murtaugh, Idaho. Milner delivers water to its landowners in Cassia and Twin Falls Counties.

12. Petitioner, Minidoka Irrigation District (MID), is an irrigation district organized and existing under the laws of the state of Idaho with its principal place of business in Rupert, Idaho. MID delivers water to its landowners in Cassia and Minidoka Counties.

13. Petitioner, North Side Canal Company (“NSCC”), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Jerome, Idaho. NSCC delivers water to its shareholders in Jerome, Gooding, and Elmore Counties.

14. Petitioner, Twin Falls Canal Company (“TFCC”), is a non-profit corporation organized and existing pursuant to the Carey Act (43 USC §§ 641, *et seq.*) and the laws of the state of Idaho, with its principal place of business in Twin Falls County. TFCC delivers water to its shareholders in Twin Falls County.

15. Respondent, Gary Spackman is the Director of the Idaho Department of Water Resources, and a resident of Ada County.

16. Respondent, Idaho Department of Water Resources (“Department”), is the executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701, *et seq.*, with its state office located at 322 E. Front St., Boise, Ada County, Idaho.

STATEMENT OF INITIAL ISSUES

17. The Petitioners intend to assert the following issues on judicial review:
 - a. Whether the Director's *Final Order* is supported by substantial evidence?
 - b. Whether the Director's application of his methodology in the *Final Order* violates Idaho law?
 - c. Whether the Director's actions are arbitrary and capricious or otherwise not in accordance with the law?
 - d. Whether the Director's denial of the Petitioners' request for a hearing violates their constitutional right to due process and the statutory right to a hearing pursuant to I.C. § 42-1701A(3)?
18. Pursuant to I.R.C.P. 84(d)(5), the Coalition reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

AGENCY RECORD

19. Judicial review is sought of the Director's September 27, 2013 *Final Order*.
20. The Department and Director refused to hold an administrative hearing on the matter so no transcript of a hearing is available.
21. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.
22. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

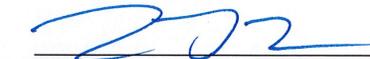
DATED this 29th day of October, 2013.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



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



W. Kent Fletcher

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of October, 2013, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Final Agency Action* upon the following by the method indicated:

Twin Falls County Court
425 Shoshone St. N.
P.O. Box 126
Twin Falls, Idaho 83303

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Courtesy Copy
Snake River Basin Adjudication
427 Shoshone Street N.
P.O. Box 126
Twin Falls, Idaho 83303

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Garrick Baxter
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Randy Budge
T.J. Budge
Racine Olsen Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Sarah Klahn
Mitra Pemberton
White & Jankowski LLP
511 16th St., Suite 500
Denver, Colorado 80202

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83205

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Kathleen Carr
U.S. Dept. of Interior
960 Broadway Ste. 400
Boise, Idaho 83706

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Matt Howard
U.S. Bureau of Reclamation
1150 N. Curtis Road
Boise, Idaho 83706-1234

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Lyle Swank
IDWR
900 N .Skyline Dr.
Idaho Falls, Idaho 83402-6105

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Allen Merritt
Cindy Yenter
IDWR
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

William A. Parsons
Parsons, Smith & Stone, LLP
P.O. Box 910
Burley, Idaho 83318

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Michael C. Creamer
Jeffrey C. Fereday
601 W. Bannock
P.O. Box 2720
Boise, Idaho 83701-2720

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

David W. Gehlert
Natural Resources Section
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email


Travis L. Thompson