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

IN THE MATTER OF THE IDAHO )  
GROUND WATER APPROPRIATORS, ) CM-MP-2009-006  
INC.'S MITIGATION PLAN FOR )  
CONVERSIONS, DRY-UPS, AND ) **SURFACE WATER**  
RECHARGE ) **COALITION'S PETITION**  
) **REQUESTING HEARING ON**  
) **ORDER APPROVING**  
) **MITIGATION PLAN / MOTION**  
) **TO AUTHORIZE DISCOVERY**  
\_\_\_\_\_ )

COME 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 Company (collectively hereafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), by and through counsel of record, and hereby submit their

*Petition Requesting Hearing on Order Approving Mitigation Plan / Motion to Authorize Discovery* pursuant to Idaho Code § 42-1701A(3) and the Department’s Rules of Procedure (IDAPA 37.01.01. *et seq.*).

### INITIAL REASONS FOR PETITION

The Idaho Ground Water Appropriators, Inc. (“IGWA”) filed a *Mitigation Plan for Conversions, Dry-Ups and Recharge* on October 6, 2009. The plan described various general actions to reduce groundwater withdrawals from the Eastern Snake Plain Aquifer (“ESPA”) including conversions, dry-ups, and recharge. The plan generally described similar actions claimed to have been performed by IGWA or its members in the past. IGWA requested IDWR to publish notice of the plan and “hold any hearing as is found to be necessary”. *Mitigation Plan* at 8. Finally, IGWA admitted that the “location and amount” of the proposed Mitigation Activities “will need to be determined on a case-by-case basis in the future”. *Id.* at 9. No protests were filed to the plan.

On May 14, 2010 the Director issued an *Order Approving Mitigation Plan* in this matter. The Director concluded that the plan complies with CM Rule 43.01 since it identifies “delivery calls filed by Blue Lakes, Clear Springs, and the SWC.” *Order* at 4. The Director further concluded that the plan “describes the water supplies for purposes of conversion and recharge”. *Id.* Finally, the Director concluded that “[o]n its face, the Director is able to consider the factors in CM Rule 43.03.” *Id.*

The Director approved the plan without hearing stating a “hearing is not necessary on the Plan itself”. *Order* at 4. In essence, the Director’s *Order* only approves “concepts” for mitigation, not a “plan” as defined by the Conjunctive Management Rules (37.03.11.43). Although actions to reduce ground water withdrawals on the ESPA may be appropriate

mitigation actions and should be encouraged, the Director cannot approve a mitigation plan by final administrative order that does not comply with the criteria set forth in Rule 43. Other than the statements contained in Conclusions of Law 2 at page 4, the *Order* sets forth no evaluation of the factors and criteria set forth in Rule 43. Accordingly, the *Order* and the Director's action approving the plan does not comply with Idaho law. Finally, the source of water for the plan (68,000 acre-feet) appears to be the same water supply offered in support of a separate mitigation plan (CM-MP-2009-007) currently under consideration by the Director. If the water is committed to IGWA's present mitigation plan it is not available as described in its plan filed in case CM-MP-2009-007.

#### **MOTION TO AUTHORIZE DISCOVERY**

The SWC 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 approving the mitigation plan.

#### **REQUEST FOR HEARING**

The SWC, 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 May 14, 2010 *Order Approving Mitigation Plan*. The SWC reserves the right to amend this petition as necessary.

DATED this 20<sup>th</sup> day of May, 2010.

**BARKER ROSHOLT & SIMPSON LLP**

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## CERTIFICATE OF SERVICE

I hereby certify that on this 28<sup>th</sup> day of May, 2010, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition Requesting Hearing on Order Approving Mitigation Plan / Motion to Authorize Discovery* on the following by the method indicated:

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c/o Victoria Wigle  
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