

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*

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548
2015 JUN 26 AM 11:04
CLERK
AM DEPUTY

*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**

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

Petitioners,

vs.

**THE IDAHO DEPARTMENT OF WATER
RESOURCES,**

Respondents.

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 35-14402

In the name of the Jeffrey M. Cook

CASE NO. CV 42-15-2492

Fee Category L.3: \$221.00

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



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 a Preliminary Order, issued by a Hearing Officer of the Idaho Department of Water Resources (“Department” or “IDWR”), on May 15, 2015, which became a Final Order of the Department on May 29, 2015, pursuant to Idaho Code §§ 67-5245 & 67-5246(3) and IDAPA 37.01.01.730.02.b & f.

2. A hearing before the agency was held in the matter on April 24, 2015.

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 §§ 42-1701A(4) and 67-5272.

5. Venue lies in this Court pursuant to Idaho Code § 67-5272 because Petitioner TFCC conducts business in Twin Falls County, Idaho.

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 Hearing Officer’s May 15, 2015 *Preliminary Order Issuing Permit* (“*Order*”) is a final agency action subject to judicial review pursuant to Idaho Code §§ 67-5245 & 67-5246(3) and IDAPA 37.01.01.730.02.b, f & g.

PARTIES

8. Petitioner A&B Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

9. Petitioner AFRD#2 is a duly organized reservoir district under the laws of the State of Idaho.

10. Petitioner Burley Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

11. Petitioner Milner Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

12. Petitioner Minidoka Irrigation District is a duly organized irrigation district under the laws of the State of Idaho.

13. Petitioner NSCC is a non-profit corporation organized under the laws of the State of Idaho.

14. Petitioner TFCC is a non-profit corporation organized under the laws of the State of Idaho and conducting business in Twin Falls County.

15. Respondent Idaho Department of Water Resources is a state agency with its main office located at 322 E. Front St., Boise, Idaho.

STATEMENT OF INITIAL ISSUES

16. The Petitioners intend to assert the following issues on judicial review:

a. Whether limiting the diversion volume under a new water right seeking an increased diversion rate to pump a volume authorized under a separate existing water right(s) constitutes sufficient mitigation for the new appropriation?

b. Whether limiting the diversion volume under a new water right seeking an increased diversion rate to a volume authorized under existing water right(s) constitutes an unlawful enlargement of water use?

c. Whether the *Order* is supported by substantial evidence?

d. Whether the *Order* complies with Idaho Law?

AGENCY RECORD

17. Judicial review is sought of the agency's *Order*.

18. The Department held a hearing in this matter on April 24, 2015, which was recorded, which recording should be made a part of the agency record in this matter. The person who may have a copy of such transcript is Sharla Cox, Idaho Department of Water Resources, 900 North Skyline Drive, Suite A, Idaho Falls, ID 83402-1718, Telephone: (208) 525-7161, Facsimile: (208) 5257177, email: sharla.cox@idwr.idaho.gov.

19. The Coalition anticipates that it can reach a stipulation regarding the agency record with the Respondent and any other parties that participate, and will pay its necessary share of the fee for preparation of the record at such time.

20. Service of this Petition for Judicial Review of Agency Action has been made on the Respondent at the time of the filing of this Petition.

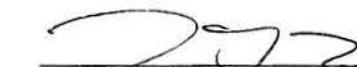
DATED this 26th day of June, 2015.

BARKER ROSHOLT & SIMPSON LLP

FLETCHER LAW OFFICE



Travis L. Thompson
Paul L. Arrington



W. Kent Fletcher

Attorneys for A&B, BID, Milner, NSCC, TFCC

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

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2015, I caused to be served a true and correct copy of the foregoing upon the following by the method indicated:

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

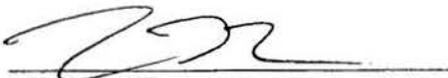
U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Garrick Baxter
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.gaxter@idwr.idaho.gov

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

Robert L. Harris
**HOLDEN, KIDWELL, HAHN &
CRAPO, P.L.L.C.**
P.O. Box 50130
Idaho Falls, Idaho 83405

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


Travis L. Thompson