

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Bryce M. Brown, ISB #12310
Abby R. Bitzenburg, ISB #12198
MARTEN LAW LLP
163 Second Ave. West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Email: jsimpson@martenlaw.com
tthompson@martenlaw.com
bbrown@martenlaw.com
abitzenburg@martenlaw.com

*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
Email: wkf@pmt.org

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

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

BONNEVILLE JEFFERSON GROUND
WATER DISTRICT,

Petitioner,

vs.

A&B IRRIGATION DISTRICT,
AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, AND TWIN FALLS CANAL
COMPANY (COLLECTIVELY THE
“SURFACE WATER COALITION”), THE
IDAHO GROUND WATER
APPROPRIATORS, INC., an Idaho non-
profit corporation, FREMONT-MADISON
IRRIGATION DISTRICT, JEFFERSON-
CLARK GROUND WATER DISTRICT,

Case No. CV10-24-2909

**RESPONDENT SURFACE WATER
COALITION’S MOTION TO CHANGE
VENUE / SUPPORTING POINTS &
AUTHORITIES**

BINGHAM GROUND WATER DISTRICT,
AMERICAN FALLS-ABERDEEN
GROUND WATER DISTRICT, MAGIC
VALLEY GROUND WATER DISTRICT,
NORTH SNAKE GROUND WATER
DISTRICT, CAREY VALLEY GROUND
WATER DISTRICT, JOHN AND JANE
DOES 1-50,

Respondents.

COME NOW, Respondents 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 CANAL COMPANY (hereinafter collectively referred to as the “Surface Water Coalition,” “Coalition,” or “SWC”), by and through counsel of record, and pursuant to I.R.C.P. 12(b)(3), hereby move for a change of venue in this matter to the Fifth Judicial District of the State of Idaho, in and for the County of Jerome under I.R.C.P. 40.1(a)(2) or, alternatively, I.R.C.P. 40.1(a)(1). This motion is supported by the *Declaration of Travis L. Thompson in Support of Motion to Change Venue* (“Declaration”) filed together herewith and applicable law. The reasons in support of this motion are set forth below.

BACKGROUND

On May 23, 2024, Bonneville Jefferson Ground Water District (“Petitioner” or “BJGWD”) filed its *Petition for Declaratory Judgement, Equitable and Injunctive Relief, and Breach of Contract* (“*Petition*”) in the District Court for the Seventh Judicial District for the State of Idaho, in and for the County of Bonneville. The petition seeks damages from the seven respondent Surface Water Coalition members, and it also lists the Idaho Ground Water Appropriators, Inc. (“IGWA”) and six ground water districts and one irrigation district as

additional respondents. *See Petition* at 2-5, 29-36. BJGWD alleges venue is proper in Bonneville County pursuant to Idaho Code § 5-404 “and other applicable laws and rules.” *Id.* at 5. According to the *Petition*, only BJGWD and IGWA have offices in Bonneville County, whereas none of the Coalition members against whom damages are sought have offices in the county. *See id.* at 2-3.

The petition has yet to be formally served in compliance with Idaho’s Rules of Civil Procedure, but the summons was served on respective representatives for the Coalition on June 4, 2024. *See Thompson Declaration*. Notwithstanding the service defect, counsel for the Coalition is filing concurrently herewith acceptance of service on behalf of their respective clients. *See Acceptance of Service*.

Idaho Code sections 5-401 to 403 establish that actions must be tried in specific counties in cases of real property, penalties against officers, or actions against a county itself. Under section 5-404, all other actions must be tried in the county in which the defendants, or some of them, reside, at the commencement of the action (in this matter, Petitioner designated the defendants to be “Respondents”). Idaho Code section 5-404 also provides: “in all actions against any corporation organized under the laws of the state of Idaho, suit or action shall be commenced and tried in any county of the state where the defendant has its principal place of business or in the county in which the cause of action arose.” Idaho Code section 6-915 states: “Actions against a political subdivision or its employee shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.”

Under I.R.C.P. 40.1(a)(2), “a judge must change the venue of a trial when it appears by affidavit or other satisfactory proof that the county designated in the complaint is not the proper

county, which motion must be made no later than 14 days after the party files a responsive pleading.”

I.R.C.P. 40.1(a)(1) establishes that a discretionary change of venue to another county may be granted as provided by statute or when it appears by affidavit or other satisfactory proof that,

- (A) there is reason to believe that an impartial trial cannot be held in the county in which the action is filed, or
- (B) the convenience of witnesses and the ends of justice would be promoted by the change.

“Our venue statutes are couched in mandatory language...Determination of venue is within the discretion of the court only in cases where conflicting issues of fact must be resolved, such as the actual residence of the defendant, convenience of witnesses, or impartial trial.”

Banning v. Minidoka Irr. Dist., 89 Idaho 506 (1965).

MOTION

The Coalition moves, under I.R.C.P. 40.1(a)(2), for a mandatory change of venue to the Fifth Judicial District, Jerome County, or in the alternative, under I.R.C.P. 40.1(a)(1), for a discretionary change of venue to Jerome County.

I. Mandatory Change of Venue is Proper under I.R.C.P. 40.1(a)(2).

The Coalition moves for a mandatory change of venue to Jerome County pursuant to I.R.C.P. 40.1(a)(2). This action is not based on real property located in Bonneville County or brought against an officer or a county, therefore section 5-404 applies, and the venue should be determined by the residence of the Respondents. In this case, there are sixteen (16) different Respondents and nine (9) of them have a primary office located within the Fifth Judicial District. Three Respondents are non-profit corporations: IGWA, North Side Canal Company, and Twin

Falls Canal Company. The rest of the Respondents are political subdivisions of the State of Idaho.

It is believed that Petitioner claims that Respondent Idaho Ground Water Users, Inc. (“IGWA”) has an office in Idaho Falls, Bonneville County and that is why venue is proper in Bonneville County. However, although IGWA was a signatory to the agreement that is the subject matter of this action, it is also a corporation composed of Petitioner and the ground water district Respondents and is governed by a Board of Directors whose Co-Chairperson is the same Chairperson as Petitioner. IGWA did not have a mailing address in Bonneville County with the Idaho Secretary of State until approximately six weeks before the filing of the Petition. IGWA’s annual reports filed with the Idaho Secretary of State show no nexus to Bonneville County, except for the location of its registered agent, until it amended its mailing address in April 2024. *See Thompson Declaration, Ex. A (Sec. of State of Idaho Annual Report); Ex. B (Change of Business Mailing Address).*

In addition, the Petition does not seek damages against IGWA or any ground water district Respondent. For the purposes of considering proper venue, IGWA is a nominal Respondent at best, controlled in part by the same Chairperson as Petitioner and ground water district Respondents who are not located in Bonneville County. The Petition alleges that the SWC Respondents are liable for damages as a result of their actions—the cause of action for those claims has to be in the counties in which the SWC entities meet, conduct business, and make decisions. None of the Coalition entities are located in Bonneville County.

None of the other Respondents in this matter have a principal place of business in Bonneville County either. As stated above, nine (9) respondents are located in the Fifth Judicial District including all of the SWC Respondents. Petitioner seeks damages only against the SWC

Respondents, all of whom are located in the Fifth Judicial District. Two ground water district Respondents, Magic Valley Ground Water District and North Snake Ground Water District, are also located in the Fifth Judicial District. Three of the Respondents have water users and deliver irrigation water or monitor water diversions in Jerome County—North Side Canal Company, American Falls Reservoir District #2, and A&B Irrigation District. In addition, Respondent North Snake Ground Water District has members that divert groundwater within Jerome County. Pursuant to Idaho Code section 5-404, actions must be tried where at least some Respondents reside. Petitioner should not be allowed to use the location of a nominal Defendant, who has no risk of damage award, and whose Co-Chairperson is the same Chairperson as Petitioner’s Chairperson, to declare that Bonneville County is the proper county for venue.

As such, this matter has been improperly filed in the wrong venue in an attempt to forum shop a location that is favorable and convenient to the Petitioner. I.R.C.P. 40.1(a)(2) states that a judge must change the venue of a trial when it appears by affidavit or other satisfactory proof that the county designated in the complaint is not the proper county, and Bonneville County is clearly an improper county when considering the location of a majority of the Respondents, the location of the Respondents at risk of an award of damages, and the nominal basis to argue that IGWA’s principal office creates proper venue.

The SWC requests that venue be changed to Jerome County, a county located in the Fifth Judicial District in which nine (9) respondents have a principal place of business, a county in which four (4) respondents have water users and deliver irrigation water or monitor water diversions, a county in which Respondent, North Side Canal Company, has its principal place of business, and a county in which Petitioner’s alleged causes of action for damages arose.

II. Alternatively, the Court Should Order a Discretionary Change of Venue as authorized by I.R.C.P. 40.1(a)(1).

Alternatively, the SWC moves, under I.R.C.P. 40.1(a)(1)(A) and (B), for a discretionary change of venue to the Fifth Judicial District, Jerome County on the grounds that there is reason to believe that an impartial trial cannot be had in Bonneville County, the convenience of the witnesses for Respondents who are at risk of a damage award would be better served to try the case in Jerome County, and the ends of justice would be promoted by the change. The SWC incorporates the arguments set forth in Section I of this Motion as though fully set forth herein.

In an apparent attempt at forum shopping, BJGWD improperly filed its Petition in Bonneville County, the county of its primary office, and that is assumed to be most convenient for the Petitioner. As discussed above, only one Respondent—IGWA—may arguably have a place of business in Bonneville County. No other Respondent maintains a personal place of business in Bonneville County and the damage causes of action raised by the Petition did not occur in Bonneville County. No Respondent, except SWC Respondents, are at risk of a damage award. Nine Respondents have principal offices in the Fifth Judicial District, and four Respondents have operations in Jerome County, including one ground water district Respondent (North Snake Ground Water District).

As described in the *Thompson Declaration* filed in support of this motion, the SWC asserts that an impartial trial cannot be had in Bonneville County. *See Thompson Declaration* at 6. Ms. Stephanie Mickelsen is the Chairman of the Board of Directors of Petitioner and the Co-Chairperson of IGWA. *Id.* She is an elected state representative who received more than 60% of the vote in the 2024 Republican primary. *Id.* Since the curtailment order was entered on May 30, 2024, Stephanie Mickelsen, IGWA, and others have engaged in a public relations campaign impugning the SWC and denigrating the actions of IDWR and its Director. *See Ex. D (Idaho*

Farmers Say Water Curtailment Order Will Dry Up Land Push Them Out of Business); Ex. E (*Idaho Department of Water Resource Director Issues Water Curtailment Order*). Petitioner was found by the Director of IDWR to have breached the agreement that is the subject matter of the action in both 2021 and 2022, and IDWR has not recognized any action taken by Petitioner to cure the 2022 breach. Junior-priority ground water users located within Petitioner are currently under a curtailment order and claim in the public relations campaign that curtailment will cost Bonneville County residents millions of dollars in damages. See Ex. C (*Final Order Curtailing Ground Water Rights Junior to March 31, 1954*). Even though IDWR determined that Petitioner breached the agreement, now Petitioner wants to try a case for “millions of dollars” of damages in front of jurists and/or a jury of residents in a county in which no SWC entity does business and Petitioner alleges county citizens have been damaged. It would be inequitable and unfair to the SWC Respondents to have this matter heard in Bonneville County.

Further, it would be much more convenient to the witnesses of at least nine (9) Respondents to change venue to the Fifth Judicial District. All of the SWC Respondents and two of the ground water district Respondents are located within the Fifth Judicial District, four respondents conduct operations in Jerome County, and two Respondents—North Side Canal Company and North Snake Ground Water District—have their principal places of business in Jerome County. See *Thompson Declaration* at 2-3. The SWC Respondents are the only Respondents subject to Petitioner’s damage claim, and all the primary witnesses for the SWC are located within the Fifth Judicial District. It would be a tremendous inconvenience to require the only Respondents who are subject to damage claims in the millions of dollars to transport their witnesses, representatives, and exhibits to Bonneville County, a distance of not less than 121

miles and up to 167 miles. For all the foregoing reasons, it would promote the ends of justice and avoid the appearance of impropriety to change venue to Jerome County.

CONCLUSION

The SWC requests that the Court change venue to the Fifth Judicial District, Jerome County, on the grounds that Bonneville County is not the proper county considering all of the foregoing factors. In the alternative, if the Court determines that Bonneville County is a county of proper venue because of the location of IGWA’s office, the SWC requests that the Court use its discretion and, after considering all of the factors set forth in this Motion and the *Thompson Declaration*, find that there are reasons to believe that an impartial trial cannot be had in Bonneville County or that the convenience of witnesses and the ends of justice would be promoted by the change of venue to Jerome County.

Oral argument is requested. The presiding judge having been disqualified, the matter will be set for hearing once notice is provided that a new judge is assigned to this case.

DATED this 10th day of June, 2024

MARTEN LAW LLP



Travis L. Thompson
Abby R. Bitzenburg

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

FLETCHER LAW OFFICE

 for

W. Kent Fletcher

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

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2024, the foregoing was filed electronically using the Court’s e-file system, and upon such filing the following parties were served electronically.

Skyler C. Johns Steven L. Taggart Nathan M. Olson P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com staggart@olsentaggart.com nolsen@olsentaggart.com		
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Travis L. Thompson