

Respondents.)
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**IN THE MATTER OF THE IDAHO
GROUND WATER APPROPRIATORS,
INC.'S MITIGATION PLAN IN RESPONSE
TO THE SURFACE WATER COALITION'S
WATER DELIVERY CALL**

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 pursuant to I.R.C.P. 59(e), hereby moves the Court to alter or amend its January 25, 2011 *Judgment and Memorandum Decision & Order on Petition for Judicial Review* (“*Order*”), and to stay proceedings in the above-captioned case until the Court issues a final decision on the consolidated appeal of the *Methodology Order* (Gooding County Case No. CV-2010-382).

MOTION

Rule 59(e) allows parties to file a motion to alter or amend the judgment within 14 days. The Coalition’s motion is timely. This Court’s January 25, 2011 *Order* upheld the Interim Director’s *Order Approving Mitigation Plan*. The Court’s decision, however, by its own terms, is contingent upon “the validity of the *Methodology Order*” – a separate administrative decision by the Director that determines the conjunctive administration and timing and quantity of the mitigation obligations. *See Order* at 16, n.5, 31. The *Methodology Order* is presently pending before this Court on petitions for judicial review filed by the Coalition and other parties.

The Coalition previously requested an order consolidating this matter (2010-3075) with the appeal of the *Methodology Order* (Case No. 2010-382) proceeding. The Court denied the Coalition's request, concluding that the cases should proceed independently. Notwithstanding the determination that these cases should proceed separately, this Court's *Order* concluded that the issues were linked and that the Court's decision in this case may be affected by the outcome of the *Methodology Order* appeal. The Court found "while this ruling has no effect on the outcome of the 2010-382 Case, the same cannot necessarily be said of the reverse situation." *Id.* at 31. As such, if the "*Methodology Order* is found to be unlawful in whole or in part in the 2010-382 case, such a determination may affect the validity of the *Order Approving Mitigation Plan* and render parts of this opinion moot." *Id.* In other words, the Court's decision in this case assumes that the *Methodology Order* is valid – a premise challenged by the Coalition – and recognizes that the *Order* may actually be mooted by a decision in Case No. 2010-382.

Since Case No. 2010-382 has been stayed pending a decision by the Idaho Supreme Court on a separate appeal, it is likely no decision will be issued by the Court on *Methodology Order* in the foreseeable future. *See Order Granting Motion for Stay* (Case No. 2010-382) ("pending the Idaho Supreme Court's issuance of a decision in the appeal presently pending before it of the final order issued in Gooding County Case No. 2008-551."). At this time, there is no briefing schedule in the SWC Supreme Court Appeal and the Court has not set a date for oral argument.

Based on the Court's determination that this case and the *Methodology Order* appeal are connected – such that a decision in Case No. 2010-382 could render the decision in this case moot – this Court should vacate the *Judgment*, and stay these proceedings until a decision is issued in Case No. 2010-382. Rather than seek an appeal of the Court's *Order* without knowing

how a future decision might affect the Court's decision, it is in the interests of judicial economy that these proceedings be stayed until a decision in 2010-382 is issued. Vacating the *Judgment* and staying the case would save the parties' time and resources and would not prejudice any party. It is appropriate for the parties to have a full understanding about a how the Court's decision on the *Methodology Order* may or may not affect the Court's *Order* before being required to pursue an appeal of the Court's *Order* before the Idaho Supreme Court.

Accordingly, the Court should vacate the January 25, 2011 *Judgment* and stay proceedings in this matter until a decision is issued in Case No. 2010-382. At that time, the Court can issue a decision in this case that is consistent with the 2010-382 decision and does not require the Court to "assume" the validity of the *Methodology Order*. The Coalition recognizes that the Director's decision approving the *Mitigation Plan* is in effect in the interim, and that conjunctive administration will proceed as well.

The Coalition requests oral argument on this motion.

RESPECTFULLY submitted this 8th day of February, 2011.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February, 2011, I served a true and correct copy of the above **SURFACE WATER COALITION'S MOTION TO ALTER OR AMEND AND FOR STAY** upon the following by the method indicated:

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