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**LODGED**

District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
<b>FEB - 9 2011</b>	
By _____	Clerk
_____	Deputy Clerk

**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, NORTH SIDE )  
CANAL COMPANY, and TWIN FALLS )  
CANAL COMPANY, )

Petitioners, )

vs. )

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

Respondents, )

and )

THE IDAHO GROUND WATER )

Case No. CV-2010-3075

**IDWR MEMORANDUM IN  
OPPOSITION TO SWC'S MOTION  
TO ALTER OR AMEND AND FOR  
STAY**

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

COME NOW Respondents, the Idaho Department of Water Resources and Gary Spackman in his capacity as Interim Director (collectively referred to herein as "Department"), and file this memorandum in opposition to the Surface Water Coalition's ("SWC") *Motion to Alter or Amend and for Stay* ("Motion"), filed with this Court on February 8, 2011. The Motion will be heard by the Court on February 25, 2011. *Notice Setting Hearing on Motion to Alter or Amend and for Stay* (February 9, 2011).

The SWC filed its Motion in response to the Court's January 25, 2011 *Memorandum Decision and Order on Petition for Judicial Review and Judgment I.R.C.P. 54(a)*, which affirmed the Department's final order approving the Idaho Ground Water Appropriators, Inc.'s storage water mitigation plan.

While plead as a motion to alter or amend in accordance with Idaho Rule of Civil Procedure 59(e), the SWC does not ask the Court to "correct errors . . . of fact and law that . . . occurred" in the proceeding. *First Sec. Bank v. Neibaur*, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977). Because the SWC has not asked this Court with any particularity to correct errors of fact or law, the Motion should be denied. *Patton v. Patton*, 88 Idaho 288, 292, 399 P.2d 262, 264-65 (1965).

Since the Motion does not ask for relief in accordance with I.R.C.P. 59(e), the Court should disregard the title of the Motion and instead look at its purpose. *State v. Goodrich*, 104 Idaho 469, 471, 660 P.2d 934, 936 (1983). The Motion specifically asks the Court to “vacate the January 25, 2011 *Judgment* and stay proceedings in this matter until a decision is issued in Case No. 2010-382.” *Motion* at 4.

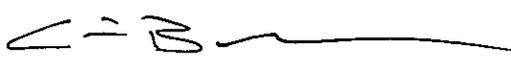
Clearly, the purpose of the Motion is an application for stay. There is, however, no basis in the Idaho Rules of Civil Procedure or the Idaho Appellate Rules to allow the SWC to stay entry of the *Memorandum Decision* and/or *Judgment* without first filing a notice of appeal. See I.R.C.P. 84(r); I.A.R. 11(a); I.A.R. 13(a)-(b). The SWC’s Motion also frustrates the appellate process because the filing of a Rule 59(e) motion “destro[ies] the finality of a judgment for purposes of appeal, and the full time for appeal commences to run anew from the entry of an order disposing of the motion and restoring finality.” *First Sec. Bank* at 603, 570 P.2d at 281.

Because the SWC cannot obtain the requested relief without first filing a notice of appeal, the Motion must be denied.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 2011.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 7<sup>th</sup> day of February, 2011.

Document Served: **IDWR Memorandum in Opposition to SWC's Motion to Alter or Amend and for Stay**

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