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DEPARTMENT OF WATER RESOURCES

District Court - SRBA  
 Fifth Judicial District  
 In Re: Administrative Appeals  
 County of Twin Falls - State of Idaho

MAR - 4 2011

By \_\_\_\_\_  
 \_\_\_\_\_  
 Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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

Petitioners, )

vs. )

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

Respondents, )

and )

THE IDAHO GROUND WATER )  
 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 )

Case No. CV-2010-3075

**ORDER DENYING MOTION TO ALTER OR AMEND AND FOR STAY**

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

1. This matter comes before the Court on a *Motion to Alter or Amend and for Stay* (“*Motion*”) filed on February 8, 2011, by Petitioners 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 (collectively, “Surface Water Coalition” or “SWC”).

2. On January 25, 2011, this Court entered a *Memorandum Decision and Order on Petition for Judicial Review* (“*Memorandum Decision*”) and *Judgment* in the above-captioned matter affirming the Director’s *Order Approving Mitigation Plan* dated June 3, 2010.

3. The *Order Approving Mitigation Plan* is one order in a series of orders issued by the Director in response to a delivery call filed by the SWC in 2005. Certain other final orders issued by the Director in response to the SWC’s delivery call are presently pending unresolved on judicial review before this Court in Gooding County Case CV 2010-382 (“2010-382 Case”).<sup>1</sup> One of those orders is the Director’s *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Methodology Order*”) dated June 23, 2010. The validity of the *Methodology Order* is at issue in the 2010-382 Case.

4. In the *Memorandum Decision*, the Court noted that a relationship exists between the *Order Approving Mitigation Plan* and the *Methodology Order* as a result of the express terms of the *Order Approving Mitigation Plan*. For instance the Court stated that “[w]ith respect to the procedures for determining IGWA’s obligation for mitigation in a given year, as well as the deadlines by which IGWA has to prove its pre-irrigation season commitment to the Director, the *Order [Approving Mitigation Plan]* incorporates those procedures and deadlines set forth in the *Methodology Order*.” *Memorandum Decision*, pp.10–11. Thus the *Order Approving Mitigation Plan* by its terms incorporates the *Methodology Order* to the extent it sets forth the procedures for determining IGWA’s

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<sup>1</sup> Upon stipulation of the parties this Court entered an *Order* on December 13, 2010 in the 2010-382 Case, staying the proceedings in that matter pending the Idaho Supreme Court’s issuance of its decision in the appeal presently pending before it of the final order issued in Gooding County Case CV 2008-551.

mitigation obligation and the annual deadlines within which IGWA must prove its commitments for mitigation water.

5. Since the validity of the *Methodology Order* is at issue in the 2010-382 Case, the Court assumed the validity of the *Methodology Order* for the purposes of the *Memorandum Decision*, and made clear that its determination in this case would have no effect upon its evaluation of the *Methodology Order* in the 2010-382 Case:

[T]he Court's ruling in this matter assumes the validity of the *Methodology Order*, pursuant to which the *Order Approving Mitigation Plan* was issued. A challenge to the validity of the *Methodology Order* is presently pending before this Court in Gooding County Case CV-2010-382 ("2010-382 Case"). The Court notes that while this ruling has no effect on the outcome of the 2010-382 Case, the same cannot necessarily be said of the reverse situation. If, for instance, 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.

*Memorandum Decision*, p.31. The primary goal of the Court in including the above-quoted language in the *Memorandum Decision* was to convey to the parties the Court's intent that none of the Court's rulings in this matter should be construed as an approval of any aspect of the *Methodology Order* or a pre-determination of any of the issues raised in the 2010-382 Case. It was the Court's intent to make clear that its ruling in this matter would in no way effect its consideration of the issues raised in the 2010-382 Case.

6. The SWC's *Motion* requests that this Court vacate the *Judgment* and stay any further proceedings in this matter, including entry of the *Judgment*, until the Court issues a final decision in the 2010-382 Case.

7. Although styled as a motion to alter or amend, counsel for the SWC made clear at the hearing and through the briefing that the *Motion* does not request the Court to alter or amend the *Judgment* under Rule 59(e), but rather requests this Court to vacate its *Judgment* under Rule 60(b)(6).<sup>2</sup>

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<sup>2</sup> The Court notes that the SWC has alleged no errors of fact or law occurring in the proceeding in this matter which would justify the relief provided for in Rule 59(e). See e.g., *First Sec. Bank v. Neibaur*, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977) (stating "Rule 59 was designed to allow the trial court either on its own initiative or on motion by the parties to correct errors both of fact and law that had occurred in its proceedings").

8. The Idaho Department of Water Resources (“IDWR”) and The Idaho Ground Water Appropriator’s, Inc. (“IGWA”) filed briefing and appeared in opposition to the *Motion*.

## II.

### MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument on the *Motion* was heard before the Court on February 25, 2011. The parties did not request additional briefing, nor does the Court require any. The matter is therefore deemed fully submitted the following business day, or February 28, 2011.

## III.

### ANALYSIS

#### A. Standard of review.

The decision to grant or deny a motion to vacate a judgment under Idaho Rule of Civil Procedure 60(b)(6) is left to the sound discretion of the trial court. *Berg v. Kendall*, 147 Idaho 571, 578, 212 P.3d 1001, 1008 (2009). Although the court is vested with broad discretion in determining whether to grant or deny a Rule 60(b)(6) motion, its discretion is limited in that such a motion may be granted only on a showing of “unique and compelling circumstances” justifying relief. *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1265, 1265 (Ct. App. 1990). The Idaho Supreme Court has noted that “the appellate courts of this state have infrequently granted relief under Rule 60(b)(6).” *Berg*, 147 Idaho at 578, 212 P.3d at 1008.

#### B. The SWC has not demonstrated unique and compelling circumstances sufficient to justify relief under Rule 60(b)(6).

The SWC argues that the facts of this case present unique and compelling circumstances justifying relief from the *Judgment* under Rule 60(b)(6). The SWC’s primary concern is that it would like this case as well as the 2010-382 Case to proceed at

the same time on appeal to the Idaho Supreme Court.<sup>3</sup> It asserts that the connection between the *Order Approving Mitigation Plan* and the *Methodology Order* is such that the two cases should proceed together on appeal in order to get a complete picture of the delivery call. It further contends the fact that this Court noted in its *Memorandum Decision* that “while the [*Memorandum Decision*] can have no effect on the outcome of the 2010-382 Case, the same cannot necessarily be said of the reverse situation” results in unique and compelling circumstances sufficient to justify relief under Rule 60(b)(6). IGWA and IDWR argue that the SWC’s *Motion* should be denied because the *Methodology Order* is only incidentally connected to the *Order Approving Mitigation Plan* and has no bearing on the fundamental holdings contained in the *Memorandum Decision*. Should the SWC desire to appeal any of the issues in this matter, IDWR and IGWA would prefer to have the appeal happen sooner rather than later to achieve finality with respect to the disputed issues of law.

As stated above, this Court has recognized a connection between the *Order Approving Mitigation Plan* and the *Methodology Order*. The Court has also noted that a ruling in the 2010-382 Case may have some effect on the *Memorandum Decision*. However, this Court agrees with IGWA and IDWR that any effect the outcome of the 2010-382 Case may have on the issues presented in this proceeding is limited and does not warrant staying entry of the judgment in this matter for an indeterminate period of time. As a result, the Court disagrees with the SWC’s contention that the facts of this case present unique and compelling circumstances justifying relief from the *Judgment* under Rule 60(b)(6). Several factors are integral to the Court’s decision in this respect.

As an initial matter, a weighing of the issues contained in the *Memorandum Decision* reveals that those that may be affected by a decision in the 2010-382 Case are slight compared to those that will not be affected. In its briefing and at oral argument the SWC failed to identify any particular issue addressed by the *Memorandum Decision* it believes may be affected by the outcome of the 2010-382 Case. In the *Memorandum Decision* itself, the Court noted only one potential impact a change in the *Methodology Order* may have on the issues addressed by the *Memorandum Decision*. The potential

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<sup>3</sup> The Court notes that the SWC’s request in this respect would be procedurally more proper if it were styled as a motion for stay filed with the Idaho Supreme Court under the Idaho Appellate Rules following the filing of a notice of appeal.

impact, which is better characterized as a caveat to the Court's holding, is identified and explained further in footnote 5 of the *Memorandum Decision* and pertains to the holding that curtailment can be a contingency plan if curtailment will prevent injury to senior rights. *Memorandum Decision*, p. 16, fn. 5. Likewise, following a review of the issues addressed in the *Memorandum Decision*, neither IDWR nor IGWA were able to identify any issue aside from the caveat noted by the Court in footnote 5 of the *Memorandum Decision* that would be affected by the outcome of the 2010-382 Case.

On the other hand, the majority of the issues addressed by the *Memorandum Decision* are over-arching issues that focus generally on the Director's authority under Rule 43 of *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11 ("CMR"), which governs the submission and evaluation of mitigation plans in the event of a finding of material injury. These issues include but are not limited to (1) whether Rule 43 of the CMR authorizes the implementation of a long term mitigation plan for an indefinite period; (2) whether Rule 43 of the CMR authorizes the approval of a long term mitigation plan which requires the commitment of replacement water on an annual basis prior to the irrigation season; (3) what issues must the Director hold a hearing on annually in the context of a long term mitigation plan; and (4) whether storage water from the same system as the senior surface water rights can be the source of mitigation water under Rule 43 of the CMR. These issues are of particular significance as issues of first impression in the application and interpretation of Rule 43 of the CMR. Furthermore these issues, rather than being limited to the facts of this case, have wider application to delivery calls generally. These issues are ripe for review should the SWC choose to seek review before the Idaho Supreme Court, and will not be affected by the outcome of the 2010-382 Case. This Court is also sensitive to the contentions of IDWR and IGWA that it is in the interest of future delivery calls to have some finality on these issues sooner rather than later.

Also of significance to the Court's decision is that the legal issues presented in this case and the 2010-382 Case are fundamentally different since the two cases implicate different sections of the CMR. The *Methodology Order* was issued by the Director in response to Rule 42 of the CMR, which governs the Director's determination of material injury in the context of a delivery call. The *Order Approving Mitigation Plan* was issued

by the Director in response to Rule 43 of the CMR, which governs the submission and evaluation of mitigation plans in the event of a finding of material injury by the Director under Rule 42. The legal issues involved under Rules 42 and 43 of the CMR are distinct.

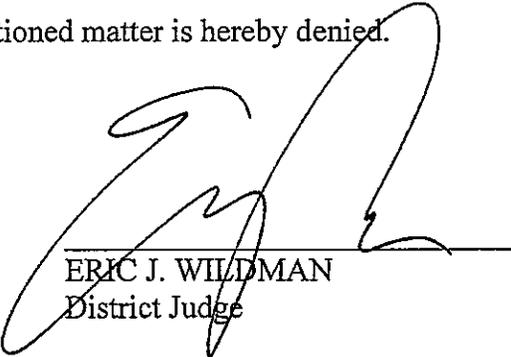
As noted by the Court above, it was the intent of the Court in including language in the *Memorandum Decision* regarding the effect of the outcome of this case on the 2010-382 case, and vice versa, to convey to the parties that none of the Court's rulings in this matter should be construed as an approval of the *Methodology Order* or a pre-determination of any of the issues raised in the 2010-382 Case. For those reasons this Court in exercising its discretion under Rule 60(b)(6) finds that this case does not present unique and compelling circumstances warranting relief from the *Judgment*.

### III.

#### ORDER

Therefore, IT IS HEREBY ORDERED that the *Motion to Alter or Amend and for Stay* filed by the SWC in the above-captioned matter is hereby denied.

Dated March 4, 2011.

  
ERIC J. WILDMAN  
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO ALTER OR AMEND AND FOR STAY was mailed on March 04, 2011, with sufficient first-class postage to the following:

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