

APPROPRIATORS, INC.;)
)
 Petitioners,)
)
 vs.)
)
CITY OF POCATELLO;)
)
 Petitioner,)
)
 vs.)
)
GARY SPACKMAN, in his capacity as Interim)
Director of the Idaho Department of Water)
Resources, and THE IDAHO DEPARTMENT)
OF WATER RESOURCES,)
)
 Respondents.)
)
 _____)
IN THE MATTER OF DISTRIBUTION OF)
WATER TO VARIOUS WATER RIGHTS)
HELD BY OR FOR THE BENEFIT OF 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)
 _____)

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 respond to the *Motion for Stay and Consolidation* and *Motion to Renumber Appeals and to File*

Appeals in Gooding County Case No. CV-2008-551, filed jointly by Idaho Ground Water Appropriators, Inc. (“IGWA”) and the City of Pocatello.

PROCEDURAL HISTORY

Presently pending before this Court are six appeals from two final orders issued by the Interim Director of the Idaho Department of Water Resources: the June 23, 2010 *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (the “*Methodology Order*”) and the June 24, 2010 *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4); Order on Reconsideration* (the “*As-Applied Order*”).

The *Methodology Order* was appealed to the Gooding County District Court by the Coalition (Appeal No. CV-2010-384), IGWA (Appeal No. CV-2010-383); and the City of Pocatello (Appeal No. CV-2010-388). The *As-Applied Order* was appealed to the Gooding County District Court by IGWA (Appeal No. CV-2010-382) and Pocatello (Appeal No. CV-2010-387). The Coalition appealed the *As-Applied Order* to the Twin Falls County District Court (Appeal No. CV-2010-3403). Pursuant to the Supreme Court’s December 9, 2009 *Administrative Order*, each of these appeals has been reassigned to the SRBA District Court for further proceedings.

Each appeal of the *Methodology Order* was filed in conjunction with the original appeal in *A&B, et al. v. IDWR* (Gooding County Case No. CV-2008-551). However, pursuant to the *Administrative Order*, each appeal was given a separate case number and subsequently reassigned to the SRBA District Court. IGWA and Pocatello filed a joint *Motion to Renumber Appeals & to File Appeals in Gooding County Case No. CV-2008-551*, seeking to have the cases removed from the SRBA Court and assigned back to the Gooding County District Court.

In addition, IGWA and Pocatello moved to have their appeals of the *As-Applied Order* consolidated with their appeals of the *Methodology Order*.

ARGUMENT

The Coalition agrees that the various appeals of the *Methodology Order* and the *As-Applied Order* should be consolidated into one proceeding. Consolidation is consistent with the purpose of the law governing consolidation. *See* I.C. § 67-5272(2). Consolidating these appeals into one action will allow for judicial economy and convenience, as each of the appeals stems from the same administrative orders issued by IDWR's Interim Director. Furthermore, whereas the *Methodology Order* purports to establish the Director's framework for determining "reasonable in-season demand" and "reasonable carryover" and material injury to the Coalition's senior surface water rights for conjunctive administration, the *As-Applied Order* attempts to apply the facts to the methodology for the 2010 irrigation season. As such, hearing all appeals in one proceeding is the most efficient manner to resolve the various petitions for judicial review. In sum, the Coalition agrees the cases should be consolidated.

Pursuant to the Supreme Court's *Administrative Order*, and this Court's July 1, 2010 *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order Dated December 9, 2009*, the proper forum for these consolidated appeals is the SRBA District Court.

The Supreme Court's *Administrative Order* is unambiguous: "It is hereby ordered that all petitions for judicial review of *any decision* regarding the administrative of water rights from the Department of Water Resources *shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court.*" (Emphasis added). There is no exception to this

requirement in either the *Administrative Order* or this Court's procedural rules. All appeals from any decision of the Department must be assigned to the SRBA District Court.

In the *A&B et al. v. IDWR* appeal, the Honorable John M. Melanson issued his *Order on Petition for Judicial Review* on July 24, 2009. IGWA and Pocatello each sought rehearing of that order. Those petitions have been fully briefed and argued and are pending. Judge Melanson stayed a decision on rehearing until the Director had issued an order "determining material injury to reasonable in-season demand and reasonable carryover." *Order Overruling Objection to Order Staying Decision*, (Mar. 25, 2010). The Court held "in abeyance any final decision on rehearing until the Director issues a *Final Order* and the time period for filing motions for reconsideration and petitions for judicial review of the new order have expired." *Id.* Judge Melanson did not state that petitions for judicial review must be filed in conjunction with the existing appeal. Nothing in the Court's order can be read to override the clear mandate of the Supreme Court's *Administrative Order*. As such, the cases should be consolidated before the SRBA District Court.

Now that the Interim Director's final orders have been issued, there is no longer any reason to postpone a decision on IGWA's and Pocatello's petitioners for rehearing. As such, Melanson can issue a decision on the pending motions and the appeals of the *Methodology Order* and *As-Applied Order* can proceed before the SRBA Court, as required by the *Administrative Order*.

CONCLUSION

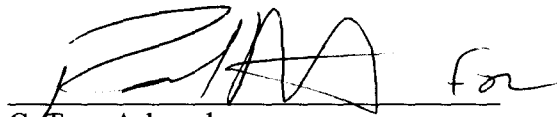
Presently pending before this Court are six appeals of two final decisions by the Interim Director. The Supreme Court's *Administrative Order* requires that they be reassigned before this Court. Furthermore, consolidation is appropriate. As such, the *Motion to Renumber Appeals*

should be denied and the *Motion or Stay and Consolidation* should be granted, with the appeals being consolidated before the SRBA District Court.

The Coalition requests a hearing on this matter.


RESPECTFULLY SUBMITTED this 28th day of July, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28TH day of July, 2010, I served true and correct copies of the foregoing upon the following by the method indicated:

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