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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioner,

vs.

CITY OF POCATELLO,

Petitioner,

vs.

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 official
capacity as Director of the Idaho
Department of Water Resources, and the
IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondents.

Consolidated Case No. CV-2010-382

(Gooding County Cases CV-2010-382,
CV-2010-383, CV-2010-384, CV-2010-
387, CV-2010-388; and Twin Falls County
Cases CV-2010-3403, CV-2010-5520, and
CV-2010-5946)

**IGWA'S OPPOSITION TO
SURFACE WATER COALITION'S
JOINT MOTION TO LIFT STAY**

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.

Idaho Ground Water Appropriators, Inc. (IGWA) hereby objects to the *Surface Water Coalition's Joint Motion to Lift Stay* filed October 25, 2013.

This case is a consolidation of appeals from the Director's *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (June 23, 2010) ("*Methodology Order*") and subsequent orders implementing the *Methodology Order*. Issues presented in these appeals are likely to be affected by a pending Idaho Supreme Court decision concerning the methodology the Director uses to determine material injury to the Surface Water Coalition. Consequently, all of the parties to this case, including the Surface Water Coalition, agreed to stay these consolidated appeals until a decision is issued by the Supreme Court, recognizing the Supreme Court decision "may moot certain issues in the appeal pending in Consolidated 382," and that a stay is in the interest of "judicial economy." (*Motion for Stay* 3, Dec. 10, 2010.) These rationales have not changed.

This court has authority to maintain the current stay, and to stay any subsequent appeals of orders implementing the *Methodology Order*, until the Supreme Court enters its decision. The Idaho Rules of Civil Procedure grant judges broad authority to stay proceedings when justice and judicial economy require. The Rules specifically authorize a district judge "acting in its appellate capacity . . . to stay proceedings during the pendency of an appeal . . . to preserve the status quo or the effectiveness of the judgment subsequently to be entered." I.R.C.P. 62(f). For the following reasons, this court should exercise its authority under Rule 62(f) to preserve the status quo by maintaining the current stay of the *Methodology Order* and subsequent orders implementing it, as well as

any future appeals of orders implementing the *Methodology Order*, until the Idaho Supreme Court enters its decision.

First, the parties stipulated to stay all such proceedings until the Supreme Court enters its decision, there is a court order implementing a stay, and the parties have not agreed to withdraw their stipulation and lift the stay.

Second, IGWA has relied on the stay, allowing a series of appeals by the Surface Water Coalition to accumulate. The Surface Water Coalition's desire to suddenly take up all eleven appeals in an expedited fashion before the 2014 irrigation season is unrealistic and prejudicial.

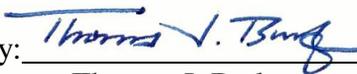
Third, while the Supreme Court decision has perhaps taken more time with its decision than the Surface Water Coalition anticipated, this is all the more reason to continue the stay, as it suggests a likelihood that the decision will materially alter future proceedings in this case. A decision will almost certainly come before there any final decision on the appeals pending in this case, making it likely that the substantial effort and expense required to litigate these appeals will have been wasted.

The idea that the Supreme Court decision can simply be addressed down the road in briefing or supplemental filings is naïve. The Surface Water Coalition has asked the Supreme Court to order the Director to completely change his methodology for determining material injury, by measuring it based on the decreed quantity of the senior's water right as opposed to the amount actually needed to accomplish beneficial use. If the Court accepts the Surface Water Coalition's argument, it will have drastic implications for the appeals in this case, likely requiring the parties to start over from square one.

For these reasons, IGWA asks this court to exercise its authority under I.R.C.P. 62(f) and preserve the status quo by maintaining the current stay of the *Methodology Order* and subsequent orders implementing it, as well as any future appeals of orders implementing the *Methodology Order*, until the Idaho Supreme Court enters its decision.

RESPECTFULLY SUBMITTED this 30th day of October, 2013.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Thomas J. Budge

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2013, I served a true and correct copy of the foregoing document on the following persons in the manner indicated:



Thomas J. Budge

<p>Clerk of the Court SRBA Deputy Clerk 253 3rd Ave. North PO Box 2707 Twin Falls, ID 83303-2707</p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile – 208-736-2121 <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
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