



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 counsel of record, pursuant to Idaho Code § 67-5272(2), and hereby moves the Court for an order consolidating related appeals presently pending before the Twin Falls County and Gooding County District Courts, and for an order staying the proceedings in this case. Counsel for IDWR, IGWA, and the City of Pocatello have represented they do not oppose these motions.

**CASES TO BE CONSOLIDATED**

1. *Idaho Ground Water Appropriators, Inc. v. Idaho Department of Water Resources, et al.*, Consolidated Case No. CV-2010-382, seeking review of the Director’s June 23, 2010 *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand & Reasonable Carryover* (the “*Methodology Order*”) and June

24, 2010 *Final Order Regarding April 2010 Forecast Supply (Methodology Steps 3&4); Order on Reconsideration* (the “*As-Applied Order*”).

2. *Twin Falls Canal Company, et al. v. Spackman, et al.*, Twin Falls County Case No. CV-2010-5520, seeking review of the Director’s September 17, 2010 *Final Order Revising April 2010 Forecast Supply (Methodology Step 7)* (the “*Step 7 Order*”).

## BACKGROUND

In January, 2005, the Coalition requested administration of hydraulically connected junior priority ground water rights so that the Director could distribute water to their senior surface water rights. As part of the ongoing administrative proceeding, the Director issued the *Methodology Order*, the *April Forecast Order*, and the *Step 7 Order*.

The *Methodology Order* established a ten-step process for determining material injury and the resulting curtailment and/or mitigation obligations. The *As-Applied Order* applied Steps 3 and 4 of the Director’s methodology. Likewise, the *Step 7 Order* applied subsequent steps of the Director’s methodology to the facts. Each of the orders applies to the material injury and mitigation obligations for the 2010 irrigation season.

The appeals of the *Methodology Order* and the *As Applied Order* were consolidated by this Court’s July 29, 2010 *Order Denying Motion to Renumber/Order Consolidating Cases Involving Petitions for Judicial Review of “Methodology Order” and “As Applied Order”* (the “*Consolidation Order*”). In the *Consolidation Order*, at pages 5-6, the Court found that the *Methodology Order* appeal and the *As-Applied Order* appeal “involve similar issues, and that consolidation of these *Petitions* will expedite resolution of this matter.”

On December 10, 2010, Respondents IDWR and Interim Director Gary Spackman filed an unopposed motion to stay proceedings in Consolidated Case No. CV-2010-382 until

resolution of *A&B Irrigation Dist., et al. v. Spackman, et al.*, Supreme Court Docket No. 38192-2010. That matter was recently appealed to the Supreme Court and briefing is not due until the spring 2011. In that motion for stay, at 1, n.1, the parties recognized that the Coalition had appealed the *Step 7 Order* and would be seeking consolidation of the appeals.

### **MOTION FOR CONSOLIDATION**

In the *Consolidation Order*, at page 5, this Court recognized that a district court is given discretion to grant a request for consolidation. *Branom v. Smith Frozen Foods of Idaho, Inc.*, 83 Idaho 502, 508 (1961). As such, “whenever the Court is of the opinion that it may expedite its business and further the interests of the litigants, at the same time minimizing the expense upon the public and the litigants alike, the order of consolidation should be made.” *Id.*


The facts in this case demonstrate that consolidation is warranted. This Court has already consolidated the appeals of the *Methodology Order* and the *As-Applied Order* (Consolidated Case No. CV-2010-382). The *Step 7 Order* (Case No. CV-2010-5520) represents an additional “step” implementing the underlying methodology in 2010. As such, just like the *Methodology Order* and the *As-Applied Order*, the *Step 7 Order* “involves similar issues.” Accordingly, since “consolidation of these [appeals] will expedite resolution of this matter”, the Court should consolidate the cases.

### **MOTION FOR STAY**

The Court recently granted the unopposed motion to stay Consolidated Case No. 2010-382 pending resolution of the referenced appeal before the Idaho Supreme Court. *See Order Granting Motion for Stay* (December 13, 2010). The Petitioners adopt the reasons for the motion to stay filed in Consolidated Case No. 2010-382 and request the Court to stay these proceedings as well. The Coalition does not request argument on these motions.

DATED this 21<sup>st</sup> day of December, 2010.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of December, 2010, I served true and correct copies of the **SURFACE WATER COALITION'S UNOPPOSED JOINT MOTION FOR CONSOLIDATION AND STAY** upon the following by the method indicated:

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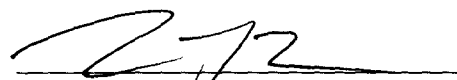
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