

**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.,)
)
) Petitioners,
 vs.)
)
 CITY OF POCA TELLO,)
)
) 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 capacity as)
 Interim Director of the Idaho Department of)
 Water Resources, and THE DEPARTMENT)
 OF WATER RESOURCES,)
)
) Respondents.
)
 _____)
)
 IN THE MATTER OF DISTRIBUTION OF)
 WATER TO VARIOUS WATER RIGHTS)

Case No.: CV-2010-382
)
) (consolidated Gooding County Cases
) CV-2010-382, CV-2010-383, CV-
) 2010-384, CV-2010-387, CV-2010-
) 388, Twin Falls County Cases CV-
) 2010-3403, 2010-5520, 2010-5946,
) 2012-2096, 2013-2305, 2013-4417
) and Lincoln County Case CV-2013-
) 155)

**ORDER DENYING MOTIONS TO
LIFT STAY**

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)

I.

PROCEDURAL BACKGROUND

1. The parties to the above-captioned proceedings previously filed written stipulations with this Court agreeing that these matters should be stayed pending the Idaho Supreme Court's issuance of its written decision in Idaho Supreme Court Docket No. 38193-2010.¹

2. This Court subsequently entered *Orders* staying the above-captioned proceedings in accordance with the terms of the parties' stipulations.

3. As of the date of this *Order*, no written decision has been issued by the Supreme Court in Docket No. 38193-2010. Notwithstanding, the 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") recently filed *Motions* asking this Court to lift the stays.

4. Responses in opposition to the *Motions* were filed by the Idaho Ground Water Appropriators, Inc., the City of Pocatello, and the Idaho Department of Water Resources.

5. A hearing on the *Motions* to lift stay was held before this Court on November 4, 2013.

¹ As a matter of clarification and housekeeping, the Court notes that stipulations to stay proceedings have been entered into by the parties in all the above-captioned cases *except* for Twin Falls County Case No. CV-2013-4417. The *Petition for Judicial Review* in that case was recently filed on October 23, 2013, and the parties have not moved the Court to stay that proceeding. That said, the parties jointly moved the Court to consolidate that matter into Gooding County Case No. CV-2010-382, which is presently subject to a stay order. This Court entered an *Order Granting Motions to Consolidate* contemporaneously herewith, consolidating Twin Falls County Case No. 2013-4417 into Gooding County Case No. CV-2010-382. In so consolidating, Twin Falls County Case No. 2013-4417 became subject to the stay order previously entered in Gooding County Case No. CV-2010-382.

II. ANALYSIS

The Court in an exercise of its discretion declines to lift the stays previously imposed in these matters. When the parties asked the Court to stay these proceedings, they stipulated to the following:

The issues on appeal in [these proceedings] relate to the issues raised in [Idaho Supreme Court Docket No. 38193-2010]. Resolution of issues in [Idaho Supreme Court Docket No. 38193-2010] may moot certain issues in the appeal pending in [these proceedings]. In addition, proceeding with the appeal in [these proceedings] may result in inconsistent determinations by appellate courts on related issues in the context of the SWC Delivery Call. For purposes of judicial economy, IDWR and the parties to these proceedings request that this Court stay all proceedings in the above-captioned matters until a decision has been entered by the Idaho Supreme Court in [Docket No. 38193-2010]. Within 30 days of a decision . . . , the parties will contact this Court regarding a status and scheduling conference to resolve any remaining matters in [these proceedings].

IDWR and the parties to these proceedings further agree that, in the interim, administration of hydraulically connected ground water and surface water rights shall continue as set forth in the Methodology Order.

Motion for Stay, Gooding County Case No. CV-2010-382, p.3 (Dec. 10, 2010).

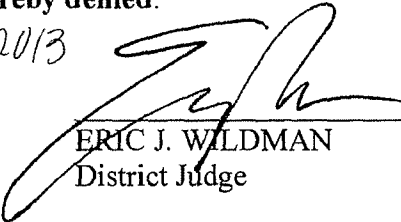
It is undisputed that the event which the parties agreed would result in the lifting of the stays has not occurred. As of the date of this *Order*, the Idaho Supreme Court has not issued its written decision in Docket No. 38193-2010. It is further undisputed that the conditions which the parties agreed justified the imposition of the stays still exist. All the parties agree that the issues presented to the Idaho Supreme Court in Docket No. 38193-2010 relate to, and may moot, the issues in the above-captioned proceedings. As a result, the Idaho Supreme Court's issuance of its written decision could affect the very issues that are to be presented to this Court in these matters. At the very least, the Idaho Supreme Court's decision will provide guidance on certain of the legal issues raised on judicial review, and will affect how the parties brief those issues. The Court is concerned that if it were to lift the stay at this time, the parties and the Court would engage in briefing and litigation which would only need to be revisited once the Idaho Supreme Court issues its written decision, resulting in a waste of resources. Lifting the stays could also result in the issuance of a decision by this Court which is ultimately inconsistent with the Idaho Supreme Court's ruling on same or similar issues. Therefore, the Court finds that lifting the

stays at this time is (1) contrary to the prior agreement of the parties, and (2) would not be in the interests of the judicial economy of the parties or this Court.

**III.
ORDER**

BASED ON THE FOREGOING, IT IS HEREBY ORDERED that the Surface Water Coalition's *Motions to Lift Stay* are hereby denied.

DATED November 12, 2013



ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTIONS TO LIFT STAY was mailed on November 12, 2013, with sufficient first-class postage to the following:

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