A. Dean Tranmer (ISB # 2793)
City of Pocatello
P. O. Box 4169
Pocatello, ID 83201
(208) 234-6149
(208) 239-6986 (Fax)
dtranmer@pocatello.us

Sarah A. Klahn (ISB #7928)
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
(303) 595-9441
(303) 825-5632 (Fax)
sarahk@white-jankowski.com
mitram@white-jankowski.com

ATTORNEYS FOR THE CITY OF POCATELLO

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 Director of the Idaho Department of Water Resources, THE IDAHO DEPARTMENT OF WATER RESOURCES, THE IDAHO GROUND WATER APPROPRIATORS, INC., and THE CITY OF POCATELLO Respondents.	Case No. CV-2013-2305 **CITY OF POCATELLO'S RESPONSE TO SURFACE WATER COALITION'S JOINT MOTION TO LIFT STAY/JOINT MOTION TO EXPEDITE**

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)
)

COMES NOW, City of Pocatello, by and through its undersigned counsel, and hereby responds to the *Surface Water Coalition's Joint Motion to Lift Stay/Joint Motion to Expedite* in the above-captioned matter.

The Surface Water Coalition's Motions should be denied for the reasons identified in *City of Pocatello's Response to Surface Water Coalition's Joint Motion to Lift Stay/Joint Motion to Expedite* ("Response"), filed on October 29, 2013, in the matter of *Idaho Ground Water Appropriators, Inc., et al. v. Spackman, et al.* in Consolidated Case No. CV-2010-382. Pocatello's arguments in its Response are incorporated herein by this reference, and a copy of that Response is attached hereto.

Respectfully submitted this 30th day of October, 2013.

CITY OF POCATELLO ATTORNEY'S OFFICE

By_____
A. Dean Tranmer

WHITE & JANKOWSKI

By_____
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCATELLO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2013, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Response to Surface Water Coalition's Joint Motion to Lift Stay/Joint Motion to Expedite** for **SRBA Case No. CV-13-2305** upon the following by the method(s) indicated:

Sarah Klahn, White & Jankowski, LLP

Snake River Basin Adjudication 253 3rd Avenue North P.O. Box 2707 Twin Falls, Idaho 83303-2707	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express _X_ Facsimile 208-736-2121 Phone 208-736-3011
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place Ste 204 Twin Falls ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	____U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-735-2444 _X_ Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	____U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-878-2548 _X_ Email
Randall C. Budge Thomas J. Budge Racine Olson Nye Budge & Bailey 201 E Center St / PO Box 1391 Pocatello ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net	____U.S. Mail, Postage Prepaid ____Hand Delivery ____ Overnight Mail ____ Facsimile 208-232-6109 _X_ Email
Garrick L. Baxter Deputy Attorneys General Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@idwr.idaho.gov deborah.gibson@idwr.idaho.gov	____U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile - 208-287-6700 _X_Email
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us	____U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile – 208-234-6297 _X_ Email

Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83205 dtranmer@pocatello.us	____U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile – 208-234-6297 _X_ Email
William A. Parsons Parsons Smith & Stone P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
Michael C. Creamer Jeffrey C. Fereday Givens Pursley LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
Kathleen M. Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 kathleenmarion.carr@sol.doi.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St.South Terrace, Ste 370 Denver, CO 80202 david.gehlert@usdoj.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
Allen Merritt Cindy Yenter IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3380 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile _X_ Email
Lyle Swank IDWR – Eastern Region 900 N Skyline Dr Idaho Falls ID 83402-6105 lyle.swank@idwr.idaho.gov	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile _X_ Email

A. Dean Tranmer I.B. # 2793
City of Pocatello
P. O. Box 4169
Pocatello, ID 83201
(208) 234-6149
(208) 234-6297 (Fax)
dtranmer@pocatello.us

Sarah A. Klahn, #7928
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
(303) 595-9441
(303) 825-5632 (Fax)
sarahk@white-jankowski.com

Attorneys for the City of Pocatello

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

OCT 29 2013

By _____ Clerk
Deputy Clerk

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,	**Consolidated Case No. CV-2010-382**
vs.	(consolidated Gooding County Cases CV-2010-382, CV-2010-383, CV-2010-384, CV-2010-387, CV-2010-388, and Twin Falls County Case CV-2010-3403)
CITY OF POCATELLO,	
Petitioner,	
vs.	Fee Category: Exempt
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,	**CITY OF POCATELLO'S RESPONSE TO SURFACE WATER COALITION'S JOINT MOTION TO LIFT STAY/JOINT MOTION TO EXPEDITE**
Petitioners,	

vs.

GARY SPACKMAN, in his capacity as 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

The City of Pocatello ("Pocatello"), through undersigned counsel, hereby responds to the Surface Water Coalition's Joint Motion to Lift Stay/Joint Motion to Expedite ("SWC Motions"). Pocatello opposes the SWC Motions. As grounds therefore, Pocatello would show the Court:

A. The stay made sense in 2010 prior to the conclusion of the original SWC appeal, and it still makes sense.

The SWC's motion to lift the stay should be denied because the basis for the stay—guidance to be provided by the Idaho Supreme Court's decision in the original SWC appeal—is still unavailable to the parties. The Idaho Department of Water Resources ("IDWR"), SWC, Idaho Ground Water Appropriators, Inc., and Pocatello negotiated the stay in this matter in 2010, and jointly sought this Court's order staying this appeal, to avoid the waste of judicial resources that would occur in seeking judicial review of the Director's June 23, 2010 *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* without clear guidance on central legal issues related to the

appropriate means to resolve claims of injury by the SWC under their delivery call. Although the SWC's Motions lay out SWC's current complaints based on IDWR's administration during the 2013 irrigation season, this is an inadequate basis to lift the Court's December 13, 2010 *Order Granting Motion for Stay* in this matter in the absence of legal guidance from the Idaho Supreme Court.

B. The fact of multiple appeals filed by the SWC related to virtually every IDWR order in the SWC delivery call during the 2010, 2012, and 2013 irrigation seasons is another basis to continue the stay.

While the SWC apparently offers the list of pending appeals related to IDWR orders on the SWC delivery call during the 2010, 2012, and 2013 irrigation seasons as a basis for lifting the stay (SWC Motions at 3), this list of pending appeals is actually additional support for continuing the stay. SWC has appealed nearly every order entered by IDWR beginning with the 2010 irrigation season related to the SWC delivery call, even those that are arguably of an interlocutory nature. Taking up the appeals in any of these matters in advance of the Idaho Supreme Court's decision would waste judicial resources and lead only to confusion regarding the issues to be briefed.

As this Court was the reviewing court throughout the A&B Irrigation District ("A&B") delivery call process, this Court can take judicial notice of the complex and repetitive procedural history related to the overlapping appeals in the A&B delivery call. Judicial review of IDWR's determinations on remand was recently the subject of a decision by this Court in Case No. CV-2011-512; A&B has again appealed the decision on judicial review, and the parties are in the midst of briefing before the Idaho Supreme Court. Pocatello, at least, is not anxious to revisit in this matter either the complexity of arguing and re-arguing the same issues over and over again in overlapping matters, or the procedural frustration associated the with judicial review and appeals in the A&B delivery call. Pocatello submits that lifting the stay in this matter would

result in only unnecessary expenditure of the parties' and the courts' resources, and would not likely lead to any meaningful resolution of the SWC's issues with its delivery call.

WHEREFORE, Pocatello requests that the Court continue the stay in this matter. The SWC should also be charged with contacting the parties and this court within 30 days of entry of a final decision from the Idaho Supreme Court to schedule a status conference to consider how to manage the overlapping and duplicative nature of the pending cases as well as to sort out the proper identity of parties to the appeals.

Respectfully submitted, this 29th day of October, 2013.

CITY OF POCATELLO ATTORNEY'S OFFICE
Attorneys for the City of Pocatello

By_____
A. Dean Tranmer

WHITE & JANKOWSKI, LLP
Attorneys for the City of Pocatello

By_____
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2013, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Response to Surface Water Coalition's Joint Motion to Lift Stay / Joint Motion to Expedite** in **Consolidated Case No. CV-2010-382, Gooding County** upon the following by the method indicated:

Sarah Klahn, White & Jankowski, LLP

via facsimile to: SRBA District Court 253 – 3rd Ave North PO Box 2707 Twin Falls ID 83303-2707	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express _X_ Facsimile 208-736-2121, Phone 208-736-3011 ____ Email
Gary Spackman, Director State of Idaho, Dept of Water Resources 322 E Front St PO Box 83720 Boise ID 83720-0098 deborah.gibson@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile 208-287-6700, Phone 208-287-4942 _X_ Email
C. Thomas Arkoosh Arkoosh Law Offices PO Box 2900 Boise ID 83701 tom.arkoosh@arkoosh.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-343-5456 _X_ Email
John A. Rosholt John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place Ste 204 Twin Falls ID 83301-3029 jar@idahowaters.com tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-735-2444 _X_ Email
W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-878-2548 _X_ Email

Garrick L. Baxter Deputy Attorneys General – IDWR PO Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-287-6700 _X_ Email
Randall C. Budge Thomas J. Budge Racine Olson Nye Budge & Bailey 201 E Center St / PO Box 1391 Pocatello ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-232-6109 _X_ Email
Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 dtranmer@pocatello.us	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail ____ Facsimile 208-234-6297 _X_ Email