C. Thomas Arkoosh, ISB #2253
CAPITOL LAW GROUP, PLLC
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873

Attorneys for American Falls Reservoir District #2

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

Attorneys for Minidoka Irrigation District

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 Interim Director of the Idaho Department of Water Resources, and **THE IDAHO DEPARTMENT OF WATER RESOURCES,**	**CASE NO. CV-2010-3075** **COALITION'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND AND FOR STAY**

Respondents,

and

THE IDAHO GROUND WATER APPROPRIATORS, INC.

Intervenor.

IN THE MATTER OF THE IDAHO GROUND WATER APPROPRIATORS, INC.'S MITIGATION PLAN IN RESPONSE TO THE SURFACE WATER COALITION'S WATER DELIVERY CALL

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 submit this reply in support of their *Motion to Alter or Amend and for Stay* filed on February 8, 2011.

REPLY

The Coalition asks the Court to vacate the judgment so that the case can be stayed and an appeal, if any, can be filed consistent with the decision to be rendered in the judicial review proceeding on the Director's *Methodology Order*, Consolidated Case 2010-382 ("382 case"). IDWR and IGWA take issue with the title of the Coalition's motion, and urge the Court to consider the motion under the provisions of Idaho Rule of Civil Procedure 60(b), rather than

Rule 59(e). Even if the Court applies the criteria of Rule 60(b), the *Order* should still be vacated and stayed based upon the unique circumstances surrounding this case.

The Idaho Supreme Court has described the basis to vacate or set aside a judgment as follows:

> Under I.R.C.P. 60(b)(6), a court may relieve a party from a final judgment, order, or proceeding for "any . . . reason justifying relief from the operation of the judgment." Idaho R. Civ. P. 60(b)(6). "[A]lthough the court is vested with broad discretion in determining whether to grant or deny a Rule 60(b) motion, its discretion is limited and [the motion] may be granted only on a showing of 'unique and compelling circumstances' justifying relief." *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996) (quoting *In re Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990)).

Dawson v. Cheyovich Family Trust, 149 Idaho 375, 234 P.2d 699, 704 (2010).

Faced with this Court's recognition that the appeal in the 382 case may "moot" the *Order* in this case, the Coalition is presently placed in the difficult position of having to file a notice of appeal with the Idaho Supreme Court without knowing how a future decision in the 382 case may or may not affect the Court's present *Order*. The Court's decision in this case, which tiers to an assumption that the Director's *Methodology Order* is valid, presents "unique and compelling circumstances" justifying relief under Rule 60(b)(6). Rather than file an appeal and ask the Idaho Supreme Court to stay the case pending resolution of the 382 case, it is in the interests of judicial economy to handle the matter at the district court level.

The Coalition simply seeks a stay of these proceedings until the Court issues a decision the 382 case. At that time, the Court can alter or amend the present *Order* as necessary to be consistent with the decision in the 382 case. Then, the parties would have a full understanding of how the two decisions interrelate for purposes of filing an appeal(s) with the Idaho Supreme Court. Certainly the Idaho Supreme Court would benefit from having both pieces of the puzzle before it at the same time, rather than piecemeal appeals of decisions that interrelate with or tier

to other decisions. In short, the Court should issue a decision that does not require the parties or the appellate court to "assume" the validity of an administrative decision that has been challenged and is pending in a separate case before the district court.

In opposing the Coalition's motion, IDWR claims the motion does not ask the Court to correct any errors in fact or law. *IDWR Resp.* at 2. Yet, this argument simply emphasizes the Coalition's concerns. Absent a final decision by this Court in the 382 case, the Court is left to "assume" its validity for purposes of its decision in this case. It is unknown what, if any, legal or factual issues will arise based on that future decision, or how the *Order* may be rendered in "moot", in full or in part.

IGWA asserts that a stay is unnecessary because the "*Methodology Order* is only incidentally tied to the *Order* and has no bearing on the fundamental holdings of the *Order*." *IGWA Resp.* at 3. IGWA's argument misses the point and misreads the Court's *Order*. The Court plainly held that its decision assumes the *Methodology Order* is valid. *Order* at 16, 31. If that assumption is changed by a future decision in the 382 case, the *Order* in this case will change as well. The *Order* in the present case did not simply conclude "that storage water is a suitable form of mitigation" and that "long-term mitigation plans are permissible under the CM Rules." *IGWA Resp.* at 4. Instead, the Court affirmed the Director's order approving IGWA's mitigation plan, which tiered to procedures and decisions in the *Methodology Order* case. There is no dispute that the Director's approval of IGWA's mitigation plan is inextricably woven with the entire *Methodology Order*. In other words, the Court's decision in this case was not simply approving a "storage for mitigation" concept as IGWA alleges.

Contrary to IGWA's arguments, even though the 382 decision may not affect every issue in the present *Order*, that is no reason to deny the Coalition's motion. The undeniable fact

remains: the Court's *Order* is based, at least in part, on the "assumption" that the *Methodology Order* is valid. Unless the parties have a complete understanding of the appropriate procedures and administration provided for under the *Methodology Order*, after judicial review in the 382 case, the present appeal is speculative and both the parties and the Idaho Supreme Court will not have a complete understanding of how the two decisions will ultimately fit together. Clearly this case presents "unique and compelling circumstances" that justify granting equitable relief under Rule 60(b)(6).

Finally, although IDWR and IGWA object to the Coalition's motion, they offer no argument as to how their interests would be harmed in the interim. Since conjunctive administration is proceeding during the pendency of the appeal that has resulted in a stay of the 382 case, and the Director has approved IGWA's mitigation plan, why should IGWA be concerned if the future appeal, if any, of the Court's *Order* is stayed until the appeal of the *Methodology Order* is finally decided? Although IGWA has to comply with the Director's orders for administration, including the provisions of the order approving the mitigation plan, there is no prejudice if an appeal is taken in 2012 rather than 2011. Since no party will be prejudiced by a stay, rather than create a confusing appeal process before the Idaho Supreme Court, judicial economy warrants staying the present proceeding until the 382 case is decided.

Accordingly, the Coalition seeks an order altering or amending and/or vacating the Court's January 25, 2011 *Order*, and staying proceedings in the above captioned appeal until the Court issues a decision on the 382 case.

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RESPECTFULLY submitted this 23rd day of February, 2011.

CAPITOL LAW GROUP, PLLC

C. Tom Arkoosh

Attorneys for American Falls Reservoir District #2

FLETCHER LAW OFFICE

W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER ROSHOLT & SIMPSON LLP

John K. Simpson
Travis L. Thompson
Paul L. Arrington

Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of February, 2011, I served a true and correct copy of the above **COALITION'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND AND FOR STAY** upon the following by the method indicated:

Garrick Baxter
Chris Bromley
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.gaxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

_____ U.S. Mail, Postage Prepaid
_____ Hand Delivery
_____ Overnight Mail
_____ Facsimile
__✓__ Email

Randy Budge
Candice McHugh
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

_____ U.S. Mail, Postage Prepaid
_____ Hand Delivery
_____ Overnight Mail
_____ Facsimile
__✓__ Email

Travis L. Thompson