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

**SEP - 2 2011**

By: \_\_\_\_\_ Clerk  
 \_\_\_\_\_ Deputy Clerk

ATTORNEYS FOR THE CITY OF POCATELLO

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF POCATELLO )  
 Petitioner, )  
 vs. )  
 Idaho GROUND WATER APPROPRIATORS, INC. )  
 Petitioner. )  
 vs. )  
 A&B IRRIGATION DISTRICT )  
 Cross-Petitioner, )  
 vs. )  
 THE IDAHO DEPARTMENT OF WATER )  
 RESOURCES and GARY SPACKMAN in his )  
 official capacity as Interim Director of the Idaho )  
 Department of Water Resources, )  
 Respondents. )

Case No. CV 2011-14409  
 (consolidated Minidoka County  
 Case No. 2011-0604)

MOTION TO STAY

IN THE MATTER OF THE PETITION FOR  
 DELIVERY CALL OF A&B IRRIGATION  
 DISTRICT FOR THE DELIVERY OF GROUND

MOTION TO STAY

WATER AND FOR THE CREATION OF A  
GROUND WATER MANAGEMENT AREA

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COMES NOW, the City of Pocatello (“City” or “Pocatello”) and hereby requests the Court stay further proceedings in the above-captioned matter. A proposed order is attached hereto. Counsel for Idaho Ground Water Appropriators (“IGWA”) has authorized Pocatello to state that IGWA joins in Pocatello’s motion. Counsel for the Idaho Department of Water Resources and A&B Irrigation District have authorized Pocatello to state that their clients do not oppose this motion.

Pocatello and IGWA have both filed notices of appeal of an Amended Final Order on Remand Regarding the A&B Irrigation District Delivery Call of the Director of the Idaho Department of Water Resources (“IDWR” or “Department”), *In the Matter of the Petition for a Delivery Call of A&B Irrigation District for the Delivery of Ground Water and the Creation of a Ground Water Management Area* entered June 30, 2011 in IDWR matter No. CM-DC-2011-001. Those appeals have been consolidated in the above-captioned matter. IGWA and Pocatello have both raised the issue of “[w]hether the Director erred in applying the ‘clear and convincing’ standard rather than a ‘preponderance of the evidence’ standard in determining that A&B Irrigation District is not materially injured.”

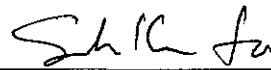
The Idaho Supreme Court is considering similar issues related to the evidentiary standard to be applied in delivery calls in two matters pending before the Idaho Supreme Court. *A&B Irr. Dist. et al v. IDWR et al* (Gooding County Dist. Ct. Case No. 2008-551) (appeals consolidated under Idaho Supreme Court Docket No. 38191-2010); *A&B Irr. Dist. v. IDWR et al* (Minidoka

County Dist. Ct, Case No. 2009-647) (appeals consolidated under Idaho Supreme Court Docket No. 38191-2010).

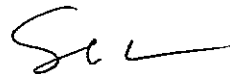
Resolution on the merits of the above-described Idaho Supreme Court proceedings will likely resolve issues in the matter at hand. Therefore, in the interest of judicial economy Pocatello and IGWA request the Court stay these proceedings until disposition by the Idaho Supreme Court of *A&B Irr. Dist. v. IDWR et al* (Minidoka County Dist. Ct, Case No. 2009-647) (appeals consolidated under Docket No. 38382-2010) and in and *A&B Irr. Dist. et al v. IDWR et al* (Gooding County Dist. Ct. Case No. 2008-551) (appeals consolidated under Docket No. 38191-2010). If necessary, Pocatello and IGWA will request a status conference with this Court to resume proceedings in this matter.

Respectfully submitted, this 2<sup>nd</sup> day of September, 2011.

ATTORNEYS FOR CITY OF POCATELLO



\_\_\_\_\_  
A. Dean Tranmer



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Sarah A. Klahn

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of September, 2011, a copy of **Motion to Stay with Proposed Order Granting Stay in Case CV 2011-14409** was served by facsimile to SRBA Court and by email only to the following parties:



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