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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

A&B IRRIGATION DISTRICT,

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,

Respondent.

)
) Case No. CV-2011-512
)
)

) **IDWR MOTION AND MEMORANDUM**
) **IN SUPPORT OF DISMISSAL OF A&B**
) **IRRIGATION DISTRICT'S JUNE 24,**
) **2011 NOTICE OF APPEAL AND**
) **PETITION FOR JUDICIAL REVIEW**
) **OF AGENCY ACTION**
)

IN THE MATTER OF THE PETITION FOR
DELIVERY CALL OF A&B IRRIGATION
DISTRICT FOR THE DELIVERY OF
GROUND WATER AND FOR THE
CREATION OF A GROUND WATER
MANAGEMENT AREA

COME NOW the Idaho Department of Water Resources and Gary Spackman, Interim
Director (collectively referred to herein as "IDWR") and move this Court to dismiss the A&B
Irrigation District's ("A&B") June 24, 2011 *Notice of Appeal and Petition for Judicial of Agency*

Action (“Petition for Judicial Review”). I.R.C.P. 84(b) & (o); Idaho Code § 67-5246. As will be explained below, the Petition should be dismissed because the April 27, 2011 final order that A&B seeks judicial review of has been superseded by a June 30, 2011 amended final order, and is not ripe for review.

In its Petition for Judicial Review, A&B seeks review of the IDWR’s April 27, 2011 *Final Order on Remand Regarding the A&B Irrigation District Delivery Call* (“April 27 Final Order on Remand”). As indicated in the Petition for Judicial Review, on May 11, 2011, after issuance of the April 27 Final Order on Remand, A&B filed a petition for reconsideration (“Petition for Reconsideration”), asking IDWR to reconsider certain findings and conclusions in said order. *Petition for Judicial Review* at 2, ¶ 2. On June 1, 2011, IDWR issued an *Order Granting Petition for Reconsideration to Allow Time for Further Review* (“June 1 Order”). The June 1 Order granted A&B’s request for reconsideration “for the sole purpose of allowing additional time for the Department to respond to the Petition.” *Id.* at Exhibit A. The June 1 Order stated that IDWR would issue an order on reconsideration by June 9, 2011. *Id.* IDWR later extended the June 9 deadline to June 30, 2011. *Id.* at Exhibit B.

On June 30, 2011, IDWR issued an *Order Regarding Petition for Reconsideration* (“Order Regarding Reconsideration”) and an *Amended Final Order on Remand Regarding the A&B Irrigation District Delivery Call* (“June 30 Amended Final Order on Remand”). These orders are attached as exhibits A and B to the *Affidavit of Chris M. Bromley*. In the Order Regarding Reconsideration, IDWR stated: “Issued contemporaneously with this decision is [the June 30 Amended Final Order on Remand] The [June 30] Amended Final Order on Remand incorporates the findings and conclusions discussed herein and supersedes the April 27, 2011 Final Order on Remand.” Emphasis added. *Affidavit of Chris M. Bromley*, Exhibit A at 1.

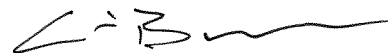
The June 30 Amended Final Order on Remand also stated that it “supersedes the April 27, 2011 *Final Order on Remand . . .*” *Id.*, Exhibit B at 1 (emphasis added).

On July 1, 2011, this Court entered a *Procedural Order Governing Judicial Review of Final Order of Director of Idaho Department of Water Resources* (“Procedural Order”). The Procedural Order acknowledged the filing of the Petition for Judicial Review, based on the April 27 Final Order on Remand, and instructed IDWR to prepare the record and transcript.

Procedural Order at 3. Therefore, A&B’s Petition for Judicial Review to IDWR’s April 27 Final Order on Remand is now proceeding before the Court.

By its own volition, A&B sought reconsideration of the April 27 Final Order on Remand. In response, IDWR granted A&B’s request to have certain issues reconsidered and subsequently issued the Order Regarding Reconsideration and June 30 Amended Final Order on Remand. Because the April 27 Final Order on Remand was expressly superseded by the June 30 Amended Final Order on Remand, IDWR respectfully requests dismissal of A&B’s Petition for Judicial Review. The only final agency action that A&B may seek judicial review from is the June 30 Amended Final Order on Remand. I.R.C.P. 84(b); Idaho Code § 67-5246.

DATED this 6th day of July 2011.



CHRIS M. BROMLEY
Deputy Attorney General
Idaho Department of Water Resources


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of Idaho and residing in Boise, Idaho; and that I served one (1) true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 6th day of July 2011.

Document(s) served: **IDWR MOTION AND MEMORANDUM IN SUPPORT OF DISMISSAL OR A&B IRRIGATION DISTRICT'S JUNE 24, 2011 NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION**

Person(s) served:

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