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*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 LINCOLN**

AMERICAN FALLS RESERVOIR )  
DISTRICT #2 )  
Petitioner, )  
vs. )  
GARY SPACKMAN, in his capacity as )  
Director of the Idaho Department of Water )  
Resources, and THE IDAHO DEPARTMENT )  
OF WATER RESOURCES, )  
Respondents, )  
IDAHO GROUND WATER )  
APPROPRIATORS, INC. )  
Respondent/Intervenor. )

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Case No. CV-2013-155

**CITY OF POCATELLO'S  
RESPONSE TO SURFACE WATER  
COALITION'S MOTION TO LIFT  
STAY/MOTION TO EXPEDITE**

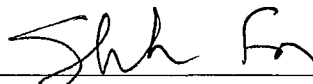
IN THE MATTER OF DISTRIBUTION OF )  
WATER TO VARIOUS WATER RIGHTS )  
HELD BY OR FOR THE BENEFIT OF A&B )  
IRRIGATION DISTRICT, AMERICAN )  
FALLS RESERVOIR DISTRICT #2, )  
BURLEY IRRIGATION DISTRICT, )  
MILNER IRRIGATION DISTRICT, )  
MINIDOKA IRRIGATION DISTRICT, )  
NORTH SIDE CANAL COMPANY, AND )  
TWIN FALLS CANAL COMPANY )  
\_\_\_\_\_ )

COMES NOW, City of Pocatello, by and through its undersigned counsel, and hereby responds to the *Surface Water Coalition's Motion to Lift Stay/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

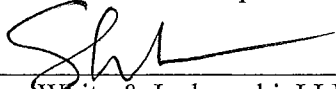
WHITE & JANKOWSKI

By   
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCATELLO

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> 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:

  
\_\_\_\_\_  
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Lyle Swank IDWR – Eastern Region 900 N Skyline Dr Idaho Falls ID 83402-6105 <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

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District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
<b>OCT 29 2013</b>	
By _____	_____ Clerk
_____	_____ Deputy Clerk

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 GOODING**

IDAHO GROUND WATER  
 APPROPRIATORS, INC.,

Petitioners,

vs.

CITY OF POCATELLO,

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,

**Consolidated Case No. CV-2010-382**

(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)

**Fee Category: Exempt**

**CITY OF POCATELLO'S  
 RESPONSE TO SURFACE WATER  
 COALITION'S JOINT MOTION  
 TO LIFT STAY/JOINT MOTION  
 TO EXPEDITE**

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 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 29<sup>th</sup> 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 – 3 <sup>rd</sup> Ave North PO Box 2707 Twin Falls ID 83303-2707	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input checked="" type="checkbox"/> Facsimile 208-736-2121, Phone 208-736-3011 <input type="checkbox"/> Email
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