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Attorneys for Petitioner A&B Irrigation District

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, Respondents. 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	CASE NO. CV-2011-512 **A&B IRRIGATION DISTRICT'S UNOPPOSED MOTION FOR I.R.C.P. 54(b) CERTIFICATE OF FINAL JUDGMENT**

COMES NOW, the Petitioner A&B Irrigation District ("A&B"), by and through its undersigned counsel, and hereby files this *Unopposed Motion for I.R.C.P. 54(b) Certificate of Final Judgment*. The bases for the motion are set forth below.

MOTION

A&B filed a petition for judicial review on June 27, 2011. The petition concerned the Interim Director's April 27, 2011 *Final Order on Remand Regarding A&B Irrigation District Delivery Call.* On July 7, 2011, IDWR filed a motion to dismiss A&B's petition. The Court granted A&B's motion by its *Order on Motion to Dismiss and Motion to Strike* ("*Order*") issued on August 11, 2011.

Idaho Rule of Civil Procedure 54(b) allows the district court to direct the entry of a final judgment upon one or more but less than all of the claims in a case upon an express determination that there is no just reason for delay. In this case the Court dismissed A&B's original petition but concurrently authorized A&B to amend its petition to appeal the Interim Director's amended final order issued on June 30, 2011. A&B filed an amended notice of appeal and petition for judicial review on August 25, 2011. Accordingly, not all of the claims in this case have been decided.

A&B submits there is no just reason for delay of the entry of a final judgment with respect to the Court's August 11, 2011 *Order*. Which agency order is subject to judicial review is a threshold question of law that should be decided at the outset of the case. Moreover, the parties should have certainty as to which final agency order will be the subject of this Court's review (i.e. April 27th final order as opposed to the June 30th amended final order) to avoid any unnecessary costs and time associated with potentially multiple appeals.

Counsel for A&B has contacted counsel for IDWR, and counsel for the parties to the administrative proceeding, IGWA, City of Pocatello, Fremont-Madison Irrigation Dist. et al. No other party opposes A&B's motion for a Rule 54(b) certificate.

No oral argument is requested. A&B respectfully requests the Court to grant this motion. A proposed order and judgment is attached for the Court's consideration.

DATED this 26th day of August 2011.

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson

Attorneys for Petitioner A&B Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August, 2011, I served true and correct copies of *A&B Irrigation District's Unopposed Motion for I.R.C.P. 54(b) Certificate of Final Judgment* upon the following by U.S. Mail, postage prepaid:

Deputy Clerk SRBA District Court 253 3rd Ave N. P.O. Box 2707 Twin Falls, Idaho 83303-2707	_____ U.S. Mail, Postage Prepaid ✓ Hand Delivery _____ Overnight Mail _____ Facsimile _____ Email
Garrick Baxter Chris Bromley Deputy Attorneys General Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov	✓ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ✓ Email

Jerry R. Rigby Rigby Andrus and Rigby 25 N 2nd East Rexburg, ID 83440 jrigby@rex-law.com	Randall C. Budge Candice M. McHugh Racine Olson P.O. Box 1391 201 E Center Street Pocatello, ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net	Sarah A. Klahn Mitra Pemberton White & Jankowski LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com
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Travis L. Thompson

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, Respondents. 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	CASE NO. CV-2011-512 **ORDER GRANTING UNOPPOSED MOTION FOR I.R.C.P. 54(b) CERTIFICATE OF FINAL JUDGMENT**

On August 11, 2011 the Court entered its *Order on Motion to Dismiss and Motion to Strike*. On August 24, 2011 A&B Irrigation District filed its *Unopposed Motion for I.R.C.P. 54(b) Certificate of Final Judgment*.

The Court, having reviewed A&B's unopposed motion, and good cause having been found, hereby GRANTS A&B's motion. The Court will enter an I.R.C.P. 54(b) certificate of final judgment with respect to the August 11, 2011 *Order on Motion to Dismiss and Motion to Strike*.

DATED this ___ day of _____ 2011.

_____
ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of _____, 2011, I served true and correct copies of foregoing upon the following by U.S. Mail, postage prepaid:

Garrick Baxter
Chris Bromley
Deputy Attorneys General
Idaho Department of Water Resources
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garrick.baxter@idwr.idaho.gov
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_____
Deputy Clerk

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, Respondents.	CASE NO. CV-2011-512 **JUDGMENT**
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	

On August 11, 2011 the Court entered its *Order on Motion to Dismiss and Motion to Strike*. The Court concluded that the Director's April 27, 2011 *Final Order Regarding A&B Irrigation District Delivery Call* was superseded by the Director's June 30, 2011 *Amended Final Order Regarding A&B Irrigation District Delivery Call*. Therefore, the Court concluded that the June 30, 2011 order is the only order from which judicial review may be taken in this case.

The Court hereby grants JUDGMENT to the Respondents IDWR and Interim Director Gary Spackman on this issue.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct the referenced judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this ___ day of _____ 2011.

_____
ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of _____, 2011, I served true and correct copies of foregoing upon the following by U.S. Mail, postage prepaid:

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SRBA District Court
253 3rd Ave N.
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_____
Deputy Clerk