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BEFORE THE SUPREME OF THE STATE OF IDAHO

A&B IRRIGATION DISTRICT
Petitioner-Appellant,

v.

**IDAHO DEPARTMENT OF WATER
RESOURCES, and GARY SPACKMAN, in his
official capacity as Director of the Idaho
Department of Water Resources,
Respondents,**

and

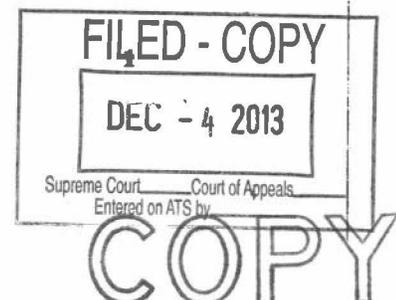
**IDAHO GROUND WATER
APPROPRIATORS, INC.; and THE CITY OF
POCATELLO,
Intervenors-Respondents.**

Docket No. 41069-2013

STIPULATION TO DISMISS APPEAL

COME NOW, the Appellant, A&B IRRIGATION DISTRICT ("A&B"), the Respondents IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, Director of IDWR (collectively "IDWR"), and the Respondent-Intervenor IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA") and stipulate, pursuant to the provisions of I.A.R. 33, that the Court order the dismissal of the above-captioned action in accordance with the following stipulated terms:

STIPULATION TO DISMISS APPEAL



STIPULATION

The undersigned parties, through their respective counsel of record, hereby stipulate to dismiss the current appeal on the following terms and conditions:

1. The parties stipulate and request that this Court enter an order: (i) dismissing the current appeal, and (ii) remanding the matter to the District Court with instructions to vacate the Director's *Final Order on Remand Regarding the A&B Irrigation District Delivery Call*, CM-DC-2011-001 (April 27, 2011).

2. The parties acknowledge and stipulate that Judge Wildman's April 25, 2013, *Memorandum Decision on Petition for Judicial Review* ("Memorandum Decision"), Minidoka County case no. CV-2011-512, is a final determination on the merits of all arguments and issues that were or could have been raised in that proceeding. With respect to the seven issues identified on pages 6 and 7 of the Memorandum Decision, the parties acknowledge that: (i) Issue 5 was properly decided on the merits; (ii) Issues 1, 3, and 4 were properly dismissed on the basis that they had been decided previously or waived; and (iii) Issues 2, 6, and 7 were properly dismissed as moot.

3. The parties acknowledge and stipulate that the Memorandum Decision was not a determination on the merits of the question that was remanded by Judge Wildman in his May 4, 2010 *Memorandum Decision and Order on Petition for Judicial Review: Whether there is clear and convincing evidence in the record to support the Director's finding of no material injury to A&B*.

4. A&B acknowledges and stipulates that before it can pursue a further determination of material injury to water right number 36-2080 before IDWR, it must (i) comply with this Court's decision in *A&B Irrigation Dist. v. Idaho Dep't of Water Res.*, 153 Idaho 500

(2012), including the obligations to (a) utilize all of its authorized points of diversion, and (b) take reasonable steps to maximize the interconnection of its well systems and, to the extent A&B does not interconnect its well systems, demonstrate that further interconnection is financially or technically impractical; and (ii) first apply the water servicing A&B's approximately 2000 enlargement acres to its original 62,604.3 acres allowed under water right number 36-2080, or factor the quantity of water delivered to enlargement acres into the material injury analysis in determining water shortages, if any, to water right number 36-2080.

5. The parties stipulate that if, after completing the actions described above, A&B believes it is suffering material injury as a result of junior-priority groundwater pumping, A&B may initiate further administrative proceedings to obtain a determination on the merits of the question that was remanded by Judge Wildman in his May 4, 2010 *Memorandum Decision and Order on Petition for Judicial Review*, as stated in paragraph 3 above, taking into account the actions taken by A&B pursuant to paragraph 4 above. A&B will initiate such proceedings by requesting a status conference with IDWR and the parties to determine how to proceed.

6. The evidentiary record established during the administrative hearing held in December of 2008 will remain part of the record for the further proceedings described in paragraph 5 above. If A&B submits information or evidence of its actions taken pursuant to paragraph 4 above, the respondents will be provided an opportunity to review and respond to that information or evidence. Any future discovery or further hearing will be conducted pursuant to IDWR's rules of procedure.

7. Each Party agrees that it will bear its own costs and attorney fees incurred in this appeal, Docket No. 41069-2013.

DATED This 3rd day of December, 2013

A&B IRRIGATION DISTRICT



Travis L. Thompson

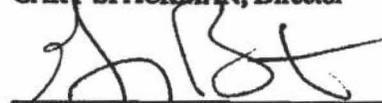
Paul L. Arrington

Attorneys for A&B Irrigation District

DATED This 3rd day of December, 2013

IDAHO DEPARTMENT OF WATER RESOURCES

GARY SPACKMAN, Director



Garrick L. Baxter

Ann Y. Vonde

Attorneys for Respondents Idaho Department of Water Resources and Gary Spackman, Director

DATED This 3rd day of December, 2013

IDAHO GROUND WATER APPROPRIATORS, INC.



Randall C. Budge

T.J. Budge

Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of December, 2013, I served true and correct copies of the *Stipulation to Dismiss Appeal* upon the following by the method indicated:

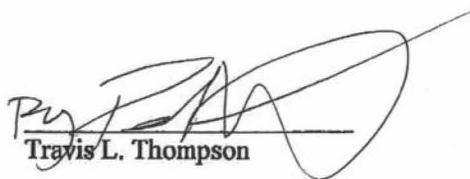
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