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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 **MOTION TO REMAND PROCEEDING TO IDWR**
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 ("IDWR") and Gary Spackman, Director of IDWR ("Director"), and move this Court for an order remanding this proceeding back to IDWR pursuant to Idaho Rule of Civil Procedure 84(r) and Idaho Appellate Rule 13.3.

BACKGROUND

On April 27, 2011, the Director issued his *Final Order on Remand Regarding the A&B Irrigation District Delivery Call ("April 27 Final Order").* The *April 27 Final Order* addressed certain legal and factual issues surrounding the A&B Irrigation District's ("A&B") ongoing conjunctive management delivery call.

On May 11, 2011, A&B filed a *Petition for Reconsideration* ("*Petition*") asking the Director to reconsider numerous findings and conclusions set forth in the *April 27 Final Order.* The Director found that the *Petition* raised "numerous technical issues with the *Final Order on Remand* that deserved the Department's full attention and thorough analysis." R. Vol. 1 p. 145. The Director therefore granted A&B's request for reconsideration, but took longer than 21 days to issue an order on reconsideration.

On June 30, 2011, the Director entered his order on reconsideration and amended final order. *Order Regarding Petition for Reconsideration ("Order on Reconsideration")*; *Amended Final Order on Remand Regarding the A&B Irrigation District Delivery Call ("Amended Final Order").* The *Amended Final Order* substantively modified the analysis used in the *April 27 Final Order.*

Notwithstanding the issuance of the *Amended Final Order*, A&B filed a petition for judicial review of the *April 27 Final Order.* IDWR moved to dismiss the petition as not being ripe for review. The District Court granted IDWR's motion, holding that the order that was subject to judicial review was the *Amended Final Order*, not the *April 27 Final Order.* A&B appealed the decision to the Idaho Supreme Court.

On appeal, the Idaho Supreme Court held that because IDWR did not dispose of A&B's *Petition* within the 21-day time period provided for by Idaho Code § 67-5246, the *Petition* was

denied by operation of law; therefore, the Court held that the order that was subject to judicial review was the *April 27 Final Order*, not the *Amended Final Order*. *A&B Irr. Dist. v. IDWR*, 2012 WL 4055353 (Idaho 2012).

ARGUMENT

THIS PROCEEDING MUST BE REMANDED TO IDWR BECAUSE NEITHER A&B NOR THE DIRECTOR SUPPORT THE *APRIL 27 FINAL ORDER*

On motion of any party showing good cause, a district court may issue an order remanding an administrative appeal to the administrative agency. I.R.C.P. 84(r); I.A.R. 13.3. Good cause exists to remand this administrative appeal back to IDWR because neither A&B nor the Director support the *April 27 Final Order*.

As discussed above, when the Director issued the *April 27 Final Order*, A&B, dissatisfied with the *April 27 Final Order*, filed its *Petition*. On reconsideration, the Director agreed with some of the criticisms raised by A&B in its *Petition* and issued his *Order on Reconsideration* and *Amended Final Order*. Now, however, the *April 27 Final Order* is before the Court, despite the fact that no party supports this order. Since neither A&B nor IDWR support the order, the matter should be remanded back to IDWR. Requiring the parties to spend additional time litigating an order that is no longer supported by any party to the proceeding would be, as suggested by Justice J. Jones, an example of poor public policy and would also be a poor use of judicial resources. *A&B Irr. Dist.*, 2012 WL 4055353 at *5. Moreover, because a district court's authority in an administrative appeal is limited, the result of litigating the issues in the order will be the same regardless—remand back to the agency. *See* Idaho Code § 67-5279; *Idaho Power Co. v. Idaho Dept. of Water Res.*, 151 Idaho 266, 276, 255 P.3d 1152, 1162 (2011)

(district court may only affirm or set aside, in whole or in part, and remand the administrative order to the agency).

In light of this standard, if the administrative agency that issued the order no longer seeks to have the district court affirm the agency action, the district court must remand the matter to the administrative agency. Here, IDWR no longer supports the *April 27 Final Order*. Rather than have IDWR and the parties waste time and resources litigating a final order that is no longer supported, the Court, in the interest of economy, should remand the proceeding back to IDWR to issue a final order that is supportable.

CONCLUSION

IDWR requests that the matter be remanded back to IDWR pursuant to Idaho Code § 67-5279 for further proceedings.

DATED this 26th day of October, 2012.

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 26th day of October 2012.

Document(s) served: MOTION TO REMAND PROCEEDING TO IDWR

Person(s) served:

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