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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,

Respondents,

and

THE IDAHO GROUND WATER  
APPROPRIATORS, INC., and THE CITY OF  
POCATELLO,

Respondents-Intervenors.

CASE NO. CV-2011-512

**JOINT MOTION FOR  
RECONSIDERATION**

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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 Petitioner, A&B Irrigation District (“A&B”), the Respondents, Idaho Department of Water Resources and Gary Spackman (“Department”), and the Respondent-Intervenors, Idaho Ground Water Appropriators, Inc., by and through their undersigned counsel of record, and move this Court for an order altering and amending the Court’s *Remittitur*, dated January 27, 2014. This motion is filed pursuant to Idaho Rule of Civil Procedure 59(e).

On January 27, 2014, this Court issued a *Remittitur* in the above-captioned action, stating that

1. The *Judgment* entered in the above-captioned case has become final; and
2. The Idaho Department of Water Resources shall forthwith comply with the directives of the *Memorandum Decision on Petition for Judicial Review* and corresponding *Judgment*, if any action is required.

*Remittitur* at 2.

This Court’s *Remittitur* followed a *Remittitur* from the Supreme Court, filed on January 13, 2014. The Supreme Court’s *Remittitur* informed this Court that A&B’s appeal had been dismissed pursuant to the terms of a *Stipulation to Dismiss Appeal*, signed by A&B, the Department, and the Idaho Ground Water Appropriators, Inc.<sup>1</sup> Through that *Stipulation*, the Parties agreed to several conditions that were not referenced or included in the Court’s *Memorandum Decision on Petition for Judicial Review and Judgment*. For example, the *Stipulation*, at ¶ 1, requested that the Supreme Court remand the matter to the District Court. The Parties then anticipated the District Court would issue a remittitur with instructs to the Director to vacate his *Final Order on Remand Regarding A&B Irrigation District Delivery Call*, DC-2011-001 (April 27, 2011) consistent with the *Stipulation*. In addition, the *Stipulation*, at ¶¶

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<sup>1</sup> The City of Pocatello did file an objection to the *Stipulation*. However, the Supreme Court approved the *Stipulation* notwithstanding the objection. A copy of that *Stipulation* is attached hereto.

5-7, included specific terms and conditions regarding future proceedings relating to A&B's delivery call.

Civil Rule 59(e) provides authority to the Court to alter or amend a judgment. The Supreme Court explained the rule as follows:

***As a means to circumvent an appeal, Rule 59(e) provides a trial court a mechanism to correct legal and factual errors occurring in proceedings before it.*** So long as a motion to alter or amend is made within the two-week time constraint of the rule, notions of finality are not disturbed. This Court will review an order denying a motion to alter or amend judgment for an abuse of discretion. So long as the trial court recognized the matter as discretionary, acted within the outer boundaries of the court's discretion, and reached its conclusion through an exercise of reason, this Court will not disturb the decision on appeal.

*Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707 (1999) (emphasis added).

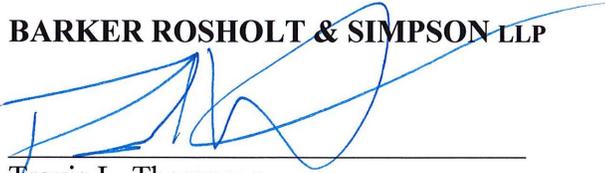
Here, this Court's *Remittitur* does not reference the *Stipulation* or the terms and conditions of the agreement between the parties. Importantly, the terms and conditions of the *Stipulation* were negotiated between the parties and formed the basis of the agreement to dismiss the appeal, which was approved by the Idaho Supreme Court. The terms and conditions of that *Stipulation* allowed the parties to move forward without the time and expense of further litigation.

Rule 59(e) should be applied to correct this error in the *Remittitur*. In short, the Court should alter and/or amend the *Remittitur* to provide that the Director shall take action to vacate the *Final Order on Remand Regarding A&B Irrigation District Delivery Call*, DC-2011-001 (April 27, 2011) consistent with the terms and conditions of the *Stipulation*. The *Remittitur* should also include a requirement that the parties comply with the terms and conditions of the *Stipulation*.

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DATED this 7<sup>th</sup> day of February, 2014.

**BARKER ROSHOLT & SIMPSON LLP**



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Travis L. Thompson  
*Attorneys for A&B Irrigation District*

DATED this \_\_\_ day of February, 2014.

---

Garrick Baxter  
*Attorneys for the Idaho Department of Water  
Resources and Gary Spackman.*

DATED this \_\_\_ day of February, 2014.

---

T. J. Budge  
*Attorneys for the Idaho Ground Water  
Appropriators, Inc.*

DATED this \_\_\_ day of February, 2014.

**BARKER ROSHOLT & SIMPSON LLP**

---

Travis L. Thompson  
*Attorneys for A&B Irrigation District*

DATED this 7<sup>th</sup> day of February, 2014.



---

Garrick Baxter  
*Attorneys for the Idaho Department of Water  
Resources and Gary Spackman.*

DATED this \_\_\_ day of February, 2014.

---

T. J. Budge  
*Attorneys for the Idaho Ground Water  
Appropriators, Inc.*

**DATED** this \_\_\_ day of February, 2014.

**BARKER ROSHOLT & SIMPSON LLP**

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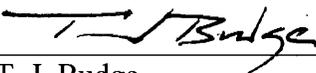
Travis L. Thompson  
*Attorneys for A&B Irrigation District*

**DATED** this \_\_\_ day of February, 2014.

---

Garrick Baxter  
*Attorneys for the Idaho Department of Water  
Resources and Gary Spackman.*

**DATED** this 7<sup>th</sup> day of February, 2014.



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T. J. Budge  
*Attorneys for the Idaho Ground Water  
Appropriators, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of February, 2014, I served true and correct copies of JOINT MOTION FOR RECONSIDERATION upon the following by U.S. Mail, postage prepaid:

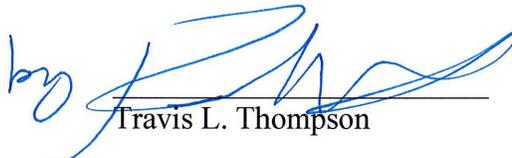
Deputy Clerk  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303  
Facsimile: 736-2121

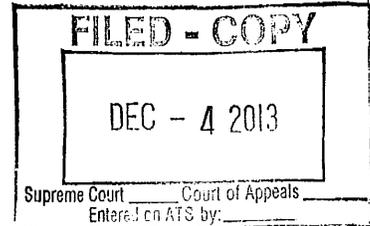
- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Garrick Baxter  
Chris Bromley  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Jerry R. Rigby Rigby Andrus and Moeller 25 N 2 <sup>nd</sup> East Rexburg, ID 83440	Randall C. Budge Candice M. McHugh Racine Olson P.O. Box 1391 201 E Center Street Pocatello, ID 83204-1391	Sarah A. Klahn White & Jankowski LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202
A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201		

  
 \_\_\_\_\_  
 Travis L. Thompson



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Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District*

**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**

1

**COPY**

## 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.

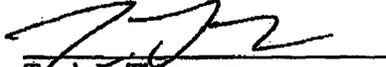
5. The parties stipulate that if, after completing the actions described above, A&B believes it is suffering material injury as a result of junior-priority groundwater pumping, A&B may initiate further administrative proceedings to obtain a determination on the merits of the question that was remanded 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 3<sup>rd</sup> day of December, 2013

**A&B IRRIGATION DISTRICT**



Travis L. Thompson

Paul L. Arrington

*Attorneys for A&B Irrigation District*

DATED This 3<sup>rd</sup> 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 3<sup>rd</sup> 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 11<sup>th</sup> day of December, 2013, I served true and correct copies of the *Stipulation to Dismiss Appeal* upon the following by the method indicated:

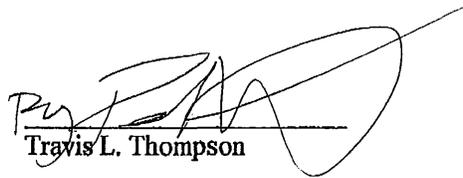
Clerk of the Courts  
Idaho Supreme Court  
451 W. State St.  
P.O. Box 83720  
Boise, Idaho 83720-0101

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
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Ann Vonde  
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Idaho Department of Water Resources  
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[ann.vonde@idwr.idaho.gov](mailto:ann.vonde@idwr.idaho.gov)

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 Hand Delivery  
 Overnight Mail  
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 Travis L. Thompson